

U.S. ENERGY ABUNDANCE: REGULATORY, MARKET, AND LEGAL BARRIERS TO EXPORT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER
OF THE

COMMITTEE ON ENERGY AND
COMMERCE

HOUSE OF REPRESENTATIVES

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U.S. ENERGY ABUNDANCE: REGULATORY, MARKET, AND LEGAL BARRIERS TO EXPORT

TUESDAY, JUNE 18, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:18 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Scalise, Shimkus, Pitts, Latta, McKinley, Griffith, Barton, Upton (ex officio), Rush, McNerney, Tonko, Green, Castor, and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Charlotte Baker, Press Secretary; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Allison Busbee, Policy Coordinator, Energy and Power; Patrick Currier, Counsel, Energy and Power; Andy Duberstein, Deputy Press Secretary; Tom Hassenboehler, Chief Counsel, Energy and Power; Jason Knox, Counsel, Energy and Power; Ben Lieberman, Counsel, Energy and Power; Nick Magallanes, Policy Coordinator, Commerce, Manufacturing, and Trade; Brandon Mooney, Professional Staff Member; Mary Neumayr, Senior Energy Counsel; Chris Sarley, Policy Coordinator, Environment and the Economy; Jeff Baran, Democratic Senior Counsel; Phil Barnett, Democratic Staff Director; Alison Cassady, Democratic Senior Professional Staff Member; Caitlin Haberman, Democratic Policy Analyst; and Elizabeth Letter, Democratic Assistant Press Secretary.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. I would like to call this hearing to order, and today's hearing is entitled "U.S. Energy Abundance and the Regulatory, Market, and Legal Barriers to Export." I am going to recognize myself for 5 minutes for an opening statement. I would like to say in the beginning that we do appreciate the witnesses that are here with us today. We have two panels of witnesses, and I will be introducing you all right before you have an opportunity to give your opening statement, but I would—do want to thank you very much for joining with us this morning to discuss this very important issue. And with that, I will recognize myself for 5 minutes for an opening statement.

I was reading an article a couple of days ago, and it was talking about worldwide there are two or three million people—between two and three million people who do not have electricity today. Our trade deficit last year in the United States was \$539 billion. Our unemployment rate is still pretty high, 7.5 percent range. Coal consumption is increasing every year worldwide, primarily because of increased use in China, India, and Asia. In fact, last year we exported 126 million tons, which was above 107, and the projections are that by 2030, it is going to just continue to go up because of the use of coal worldwide. We all know that having basic electricity is vital to a society functioning, and as I said, our coal is going into some areas that certainly need help. All of you are very much aware of the abundance of coal we have in America today, recoverable coal. We also are the number one natural gas producer in the world in 2010 because of recent discovery in shale fields. So we have a tremendous opportunity in the U.S. to have a significant amount of export of both coal and natural gas, and it will help decrease our trade deficit. It will help increase the number of jobs available in America, and I think about the railroad industry that is moving a lot of coal and oil today, and just one railroad, the Burlington Northern in Santa Fe, I was talking to some of their people recently, are spending about \$4.3 billion a year just maintaining their railroads and multiply that by the number of railroads around the country, and there is no government money involved in it. So we have private enterprise putting in money to create jobs in America to export a product and products, or at least the potential of doing it that the world wants and the world needs.

And so at today's hearing, we are going to focus on what are the obstacles to this, because we all know that there are significant obstacles. There are regulatory obstacles, market obstacles, permit obstacles, and then a lot of lawsuits are being filed. Mayor Bloomberg alone gave \$50 million to the Sierra Club basically to file lawsuits against the coal industry. And I am a fan of the Sierra Club, and I will be the first to say that they have done a lot of good in America, but at the same time, when you are deliberately filing lawsuits to stop jobs from being produced in America, I think that is not something that we need very much of.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD

Today's hearing is entitled "U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export." It builds upon our previous hearings that have assessed the tremendous potential for increased American energy production, including the opportunities to expand energy exports. Today, we will look at the barriers to realizing this export potential with an eye towards lessening regulatory hurdles and expeditiously approving our export opportunities.

We all want to reduce our trade deficit and perhaps one day have a trade surplus. And America's growing energy abundance is already beginning to make this goal a reality, both by reducing the need for energy imports and by expanding exports. However, we should remain mindful that if our trading partners don't get their coal or natural gas from us, they will very likely get it from another energy-exporting nation with weaker environmental safeguards.

And we can continue to increase energy exports. We have long had an abundance of coal in this country and have exported it for many years. But growing world demand for affordable and reliable energy has led to record-setting coal exports in recent years. In 2012, the U.S. exported 125.7 million short tons of coal and EIA estimates that amount to rise to 144 million short tons by 2030. In 2011 in Kentucky

alone, coal mining operations employed over 25,000 workers, and 1,760 of those jobs stemmed directly from the production of coal for export. We could continue breaking these records in the years ahead, bringing billions of dollars in revenues into the country and supporting jobs all along the supply chain from coal miners to railroad workers to dock workers.

And over the past few years we have seen a remarkable expansion of domestic natural gas production to the point that we are now the number one producer in the world. As with coal exports, natural gas exports would create jobs and economic development while strengthening our ties with energy-importing allies like Japan and India who would much rather buy from us than from Russia or Iran.

Unfortunately, those who are trying to shut down the production and use of coal and natural gas in the U.S. are attempting to do the same thing to exports. And much of their focus is on infrastructure. Not only do we need to mine the coal and drill for natural gas, but we need the transportation and pipeline systems to deliver it to the nation's port facilities. And we need to expand those port facilities to handle the growing volumes. But many of these job-creating infrastructure projects are being held up by an array of burdensome regulations, permit requirements, and legal challenges brought by litigious environmental groups. There are currently two licenses that have been approved to export LNG and 18 applications that have been filed and are pending with DOE.

For example, the growth of coal exports will necessitate the construction of new port facilities and the expansion of existing ones, which comes under the purview of the Army Corps of Engineers. The last thing we need is the kind of years-long bureaucratic delays comparable to what we have seen with Keystone XL, but the threat of such delays is very real.

LNG facilities also face a host of barriers, originating with the Natural Gas Act of 1938 and extending to more recent measures. Even beyond federal licensing issues, these projects also face the threat of litigation from activist organizations.

The reality is that market forces will determine the amount and to what extent we export our energy from the U.S. Policies that delay or prevent energy exports are detrimental to energy producing states like Kentucky, and they hurt the nation as a whole. And I might add that the environmental arguments against energy exports don't stand up to scrutiny. Instead of arbitrary and irrational barriers proposed on U.S. exports, the U.S. can be a global energy leader by exporting affordable and reliable energy to poverty-stricken countries that would otherwise have no electricity.

I have concerns that the approval process for these export projects is not a balanced one as it clearly should be, especially in light of the opportunities before us. We need to restore that balance. I look forward to hearing the insightful testimony from our government and industry witnesses today.

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Mr. WHITFIELD. I still have a minute and 30 seconds left, so I would like to yield the balance of my time to the gentleman from Louisiana, Mr. Scalise.

Mr. SCALISE. Well thank you, Mr. Chairman.

If you look at the barriers to export, I know in South Louisiana, the first LNG facility that has been permitted, Cheniere, is spending billions of dollars—this is all private money—to be able to export natural gas. This is something that I think if you look across America, there are going to be more opportunities as we explore this revolution in shale with hydraulic fracturing and horizontal drilling, the things that it has opened up, the opportunities not just to create jobs for America, for Americans to create billions of dollars in economic activity in the States that have chosen to be a part of this revolution, but also it has allowed America not only to be energy independent in terms of natural gas, which has been great, not just for natural gas but for manufacturing in our country. It is going to reindustrialize a lot of the chemical facilities, a lot of other facilities that were looking at moving out of the country because it has provided a stable source of energy. It has also provided

us an opportunity to export energy, which is something that we should be looking at doing more of, because again, this allows us to be competitive. It allows us to bring that trade balance down.

And so if you look at the threats to the ability to export more, a lot of these are coming from federal agencies right now. You know, we had the Secretary of Energy last week talking about energy independence and all-of-the-above, and this is part of it.

So I appreciate the focus, Mr. Chairman. I yield back the balance of my time.

Mr. WHITFIELD. Gentleman yields back. At this time, I would like to recognize the gentleman from Illinois, Mr. Rush, for a 5-minute opening statement.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. I want to thank you, Mr. Chairman, and I want to thank the witnesses for appearing before the subcommittee today. Mr. Chairman, I commend you for holding today's timely hearing on the potential impacts of exporting both coal and LNG to overseas markets.

There is no doubt in my mind that the energy sector will play a huge role in helping to get the American economy back on track, while also creating the jobs and the economic opportunity that can benefit all sectors of the American population. Just as I believe that energy will play a substantial role in helping to bolster the U.S. economy, I also believe that the increased production of natural gas will play a crucial role within the energy sector of helping us become more competitive and energy independent.

With the new technologies of hydraulic fracturing and horizontal drilling, we are already seeing natural gas production defy expectations of only a few years ago, when most experts believed that the U.S. would need to become a net importer of natural gas in order to meet its domestic demands. However, today, Mr. Chairman, through the increased use of fracking and horizontal drilling, we have seen natural gas production in the U.S. rise by 34 percent between 1990 and 2012, and the EIA projects that under existing policies, natural gas production will increase by an additional 39 percent by 2040. Even with the EIA predicting that domestic consumption of natural gas will increase modestly in the electric, industrial, and to a lesser extent, the transportation industries, the agency still expects for the U.S. production of natural gas to outpace demand, resulting in the U.S. becoming a net exporter of natural gas by 2020.

Which brings us to today's hearing, Mr. Chairman, where we will have the opportunity to hear from relevant stakeholders from within federal agencies and from within industry on the regulatory, market, and legal barriers to exporting natural gas, as well as the potential impacts and unintended consequences of making these exports. It is my hope that today's hearing will shed more light on important issues associated with exporting LNG and coal, including the impact on domestic prices, the potential for jobs, the effect on our manufacturing base, as well as the effect on the U.S. trade balance.

Additionally, Mr. Chairman, as a record-setting 2012 where we witnessed an historical number of heat waves, wildfires, flooding and drought, and with 2013 already showing signs of record-breaking tornadoes, wildfires, and hurricanes sweeping across our Nation and destroying lives and property, it is imperative that we also hear about climate change as we debate whether to export coal and LNG overseas. As policymakers, it is our duty to understand the totality of the consequences for the decisions we make in regards to exporting coal and LNG.

Mr. Chairman, with that, I yield back the balance of my time.

Mr. WHITFIELD. Thank you, Mr. Rush. At this time, I recognize the chairman of the full committee, Mr. Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well thank you, Mr. Chairman.

America's energy landscape is indeed changing for the better, creating opportunities for jobs, economic growth, energy security, and an enhanced standing around the world. But this bright energy future is far from guaranteed. Federal laws and regs that are stuck in the past could devastate newfound opportunity, in addition to an Administration that sometimes seems more intent on rewarding a handful of environmental activist allies rather than capitalizing on our new energy abundance that certainly would create jobs and stimulate the economy for the benefit of all.

According to CRS, America has the largest fossil fuel reserves of any nation on earth, and estimates keep growing because of technological advances. At the same time, the global demand for energy is on the rise. According to the World Bank, more than 1.2 billion people—that is b as in big—17 percent of the world's population, are still without access to electricity. So when you put two and two together, the U.S. has the potential to become the world's pre-eminent supplier of affordable and reliable energy, and with commonsense planning and continued safe and responsible development, our country can indeed help to take the power back from OPEC and geopolitically unstable regions of the world and be a force of change to help bring nations out of poverty with our energy resources.

We are already seeing increased exports of coal. Rapidly rising domestic natural gas production is likely to become the next American-made energy source to reach the global market. As a recent report conducted for the DOE concluded, America can export a portion of its natural gas abundance while, in fact, still maintaining affordable domestic supplies to continue to power our manufacturing renaissance.

All that is missing is the additional infrastructure to make expanded exports possible, and achieving our export potential would have the added benefit of creating thousands, tens of thousands, of new jobs.

Unfortunately, the build-up of red tape over the last couple of decades has become a real obstacle, especially for the kinds of major projects that will be needed such as pipelines, ports, and LNG facilities.

The cumbersome federal approval process is out of step with where we are as an energy-producing Nation today, and that is partly due to the ingrained mindset of energy scarcity that has proven slow to change despite the dramatic and unexpected rise in domestic energy supplies. But it is also due to overlapping laws and regs that create multiple opportunities for delays and for litigation. The Keystone XL pipeline is a perfect example of the kind of project delays we are talking about. We have been waiting for nearly 5 years for federal approval, and when it comes to the projects necessary to expand exports, thereby increasing jobs and improving our trade balance, we should not have to wait that long. Just as we are putting jobs at risk by failing to approve Keystone, we may forego jobs and economic growth by not pursuing energy export projects in a timely fashion.

The private sector has made rapid progress in unlocking our energy abundance. What the American people now need is a regulatory process that can keep up with the evolving energy landscape.

Are there other members wishing—I will yield the balance of my time to Mr. Barton.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

America's energy landscape is changing for the better, creating opportunities for jobs, economic growth, energy security, and an enhanced standing around the world. But this bright energy future is far from guaranteed. Federal laws and regulations that are stuck in the past could devastate newfound opportunity, in addition to an administration that seems more intent on rewarding a handful of environmental activist allies rather than capitalizing on our new energy abundance that would create jobs and stimulate the economy for the betterment of all.

According to the Congressional Research Service, America has the largest fossil fuel reserves of any nation on earth, and estimates keep growing because of technological advances.

At the same time, the global demand for energy is on the rise. According to the World Bank, more than 1.2 billion people—17 percent of the world's population—are still without access to electricity. Put two and two together, and the U.S. has the potential to become the world's preeminent supplier of affordable and reliable energy. With commonsense planning and continued safe and responsible development, our country can help to take the power back from OPEC and geopolitically unstable regions of the world and be a force of change to help bring nations out of poverty with our energy resources.

We are already seeing increased exports of coal, and rapidly rising domestic natural gas production is likely to become the next American-made energy source to reach the global market. As a recent report conducted for the Department of Energy concluded, America can export a portion of its natural gas abundance while still maintaining affordable domestic supplies to continue powering our manufacturing renaissance.

All that is missing is the additional infrastructure to make expanded exports possible—and achieving our export potential would have the added benefit of creating thousands of new jobs.

Unfortunately, the build-up of red tape over the last several decades has become a real obstacle, especially for the kinds of major projects that will be needed such as pipelines, ports, and LNG facilities. The cumbersome federal approval process is out of step with where we are as an energy-producing nation today.

This is partly due to the ingrained mindset of energy scarcity that has proven slow to change despite the dramatic and unexpected rise in domestic energy supplies. But it is also due to overlapping laws and regulations that create multiple opportunities for delays and for litigation.

The Keystone XL pipeline is a perfect example of the kind of project delays we are talking about. We have been waiting for nearly five years for federal approval of Keystone XL. When it comes to the projects necessary to expand exports, thereby increasing jobs and improving our trade balance, we should not have to wait that long. Just as we are putting jobs at risk by failing to approve Keystone XL, we may

forego jobs and economic growth by not pursuing energy export projects in a timely fashion.

The private sector has made rapid progress in unlocking our energy abundance. What the American people now need is a regulatory process that can keep up with this evolving energy landscape.

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Mr. BARTON. Thank you, Mr. Chairman.

There are three things that we need to know with regards to natural gas exports. Number one, we are the world's largest producer of natural gas. Number two, we have the world's largest amount of reserves of natural gas, and number three, we have the world's cheapest price. Prices in the United States are $\frac{1}{3}$ of the—less than $\frac{1}{2}$ the price over in Europe, less than $\frac{1}{3}$ of the price in Asia, and less than $\frac{1}{4}$ of the price in South America. It would seem it is a win/win if we could license some export facilities, get these natural gas products overseas, bring the wealth back from overseas that pays for it and use that to create more jobs in America.

The same thing can be said on coal. The good news on coal is it doesn't have some of the regulatory requirements for export that natural gas does.

So Mr. Chairman, I think this is a good hearing, and I look forward to hearing from the witnesses. I will yield to whoever.

Mr. WHITFIELD. Gentleman yields back. At this time, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman.

At today's hearing, we will focus on the export of liquefied natural gas and coal. These are complex issues and it is important for the subcommittee to understand how they relate to our energy policy. There are multiple factors to consider when evaluating exports. Proponents of increasing our exports of natural gas and coal stress that exports can help our balance of trade and create new economic opportunities. Opponents raise a number of concerns ranging from potential environmental harm to price impacts for U.S. consumers and manufacturers.

In my view, a key factor on this issue, as on so many other energy issues, is climate change. Climate change is the biggest energy challenge we face. We can't have a conversation about America's energy policy without also having a conversation about climate change. The energy policy decisions we make today will have an impact on whether we can prevent the worst impacts of climate change in the future. We need to understand and weigh those risks, otherwise we are in danger of locking in infrastructure that will produce carbon pollution for decades to come, or creating stranded investments that must be shut down before they serve their useful life.

Last week, the International Energy Agency released a report concluding that the world is not on track to meet the goal of limiting global average temperature to rise below 3.6 degrees Fahrenheit above the preindustrial levels. Climate scientists tell us that

if global average temperatures increase beyond this threshold, society will face devastating impacts.

It is not too late to keep temperatures below the most dangerous levels if we act now to cut carbon pollution. The International Energy Agency found that taking key actions now to reduce emissions could be done at no net economic cost, while delay would impose trillions of dollars in costs on society.

It is through that lens we need to examine whether to construct new export terminals to ship America's natural gas and coal overseas. Liquefied natural gas and coal export terminals are huge, multi-billion dollar investments that will last for decades. It would make no sense to build these facilities only to find out that they are unsustainable because of the climate implications.

I have an open mind about natural gas exports. Natural gas combustion for electricity emits less carbon pollution than coal. If natural gas exports displace coal consumption, that can produce a significant net climate benefit, especially if we tackle the problem of fugitive methane emissions. On the other hand, if natural gas exports raise gas prices in the United States, that could cause some utilities to switch back to coal, erasing some of the carbon pollution reductions that our country has recently achieved. We should fully understand these climate impacts before these facilities are built, not after.

With respect to coal exports, the United States and the rest of the world need to reduce our dependence on carbon-intensive fuels like coal, and move towards a cleaner, low-carbon energy future. Building billions of dollars in new infrastructure that guarantees China a steady supply of cheap coal for decades to come is the opposite of what we should be doing. Governor Inslee of Washington State, Governor Kitzhaber of Oregon, the two States that would be most directly affected by new coal export terminals, wrote a letter to the White House on this very point. They argued that "before the United States and our trading partners make substantial new investments in coal generation and the infrastructure to transport coal, extending the world's reliance on this fuel for decades, we need a full public airing of the consequences of such a path" and they call on the White House to thoroughly examine this matter. I agree with these Governors. If we do not, at the very least, understand the consequences of our energy policies before we implement them, I think we would be making a mistake.

I thank our witnesses for appearing today and I look forward to your testimony.

Mr. WHITFIELD. Thank you, Mr. Waxman.

At this time I would like to introduce the first panel, and as I said in the beginning, we appreciate your being with us. Thank you for coming and we look forward to your comments.

First we have Mrs. Jennifer Moyer, who is the Acting Chief, Regulatory Program at the U.S. Army Corps of Engineers. We have Mr. Jeff Wright, who is the Director of Office of Energy Projects at the Federal Energy Regulator Commission, and we have Mr. Christopher Smith, who is the Principal Deputy Assistant Secretary and Acting Assistant Secretary of Energy—I mean, for Fossil Energy at the Department of Energy.

So thank you for joining us, and each one of you will be recognized for 5 minutes for an opening statement. If you would remember to pull the microphone close to you and just be sure to turn it on, and when your time is expired, there are two little boxes and the red light will go on.

So Ms. Moyer, we will recognize you for your 5-minute opening statement. Thank you.

STATEMENTS OF JENNIFER C. MOYER, ACTING CHIEF, REGULATORY PROGRAM, U.S. ARMY CORPS OF ENGINEERS; JEFF C. WRIGHT, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION; AND CHRISTOPHER A. SMITH, PRINCIPAL DEPUTY ASSISTANT SECRETARY AND ACTING ASSISTANT SECRETARY FOR FOSSIL ENERGY, U.S. DEPARTMENT OF ENERGY

STATEMENT OF JENNIFER C. MOYER

Ms. MOYER. Thank you. Chairman Whitfield, Ranking Member Rush, and members of the subcommittee, I am Jennifer Moyer, Acting Chief of the Regulatory Program for the U.S. Army Corps of Engineers. Thank you for the opportunity to discuss the Corps' regulatory authorities under Section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act. I will specifically discuss the Corps' role in permitting of shipping facilities with a focus on coal and the issues currently being discussed in the Pacific Northwest.

The responsibility for making final permit decisions has been delegated to our 38 district commanders. They are the closest to the proposed activities, have staff and expertise to evaluate applications, and know the aquatic resources and navigation issues involved.

Section 10 permits are required for work in navigable waters of the U.S., while Section 404 permits are required for the discharge of dredged or fill material into waters of the United States. First, a little background on the existing shipping terminals along the Gulf Coast and East Coast, which have accounted for most U.S. coal exports over the past 10 years.

Depending on originating and export facilities locations, coal is shipped over existing rail networks or by barge on our Nation's inland waterway system. In 2012, total U.S. coal exports increased about 126 million tons due to a substantial increase in the amount of steam coal exported, which is used for generating electricity. The National Environmental Policy Act, or NEPA, mandates that agency conclusions be supported by critical thinking and reasoned analysis of the potential environmental consequences of a proposed agency action, such as a decision on a pending permit application.

The Corps first identifies the federal action under consideration and then decides whether we have sufficient control and responsibility for activities outside of our regulatory jurisdiction; that is, waters of the United States, such that the issuance of a Corps permit would amount to approval of those activities. The Corps limits its review to only the specific activity requiring a Corps permit and those portions of the activity over which the Corps then has sufficient control and responsibility. The Corps is evaluating shipping

facility proposals at three separate and independent locations in the Pacific Northwest. These three facilities have generated considerable public interest, in part because these facilities' primary purpose would be to receive coal via rail from the Powder River Basin in Wyoming and Montana for shipment via barges and oceangoing vessels to other locations, including Asia.

When considered in accordance with the laws and regulations I have discussed above, many of the activities of concern to the public, such as rail traffic, coal mining, shipping of coal outside of U.S. waters, and the burning of coal overseas are outside of the Corps' control and responsibility. These activities are too far attenuated and distant from the proposed activities being evaluated by the Corps to be considered effects of the Corps' permit actions. The Corps expects to receive many comments from the public and from sister federal, state, and local agencies, and especially from tribes on these issues, and we will carefully consider all the comments we receive.

Based on anticipated direct, indirect, and cumulative impacts, the Seattle District is currently preparing a draft environmental impact statement for the Gateway Project, and a separate draft environmental impact statement for the Millennium Project. For the Coyote Island Project, the Portland District is currently preparing an environmental assessment. The three proposed projects are not a Corps plan or a program, therefore preparation of a programmatic EIS in this case is not appropriate. Because they are independent projects at different locations whose impacts are not related and they are unconnected single actions under NEPA, preparation of an area-wide or regional EIS is not appropriate, based on our review of pertinent regulations. Based on these facts, we have determined that preparation of neither a programmatic EIS nor an area-wide or regional EIS is appropriate.

The scope of analysis established by the Corps in the review of each proposal will include the specific activity required by a Corps permit, the environmental effects or impacts of that specific activity, and those portions of the entire project over which there is sufficient federal control and responsibility to warrant a Corps NEPA review. The preparation of the NEPA documents for these projects, all three of them, is at an early stage.

In summary, our Seattle and Portland Districts are reviewing these proposals and carrying out the NEPA scoping process to determine which potential environmental effects to analyze in detail. The Corps Districts will carefully consider each of these proposals while appropriately bounding the scope of analysis and consideration of the impacts in accordance with existing regulations, policies, and guidance.

I appreciate the opportunity to be here today and will be happy to answer any questions that you may have.

[The prepared statement of Ms. Moyer follows:]

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

**JENNIFER A. MOYER
ACTING CHIEF, REGULATORY PROGRAM
U.S. ARMY CORPS OF ENGINEERS**

BEFORE

**THE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER**

UNITED STATES HOUSE OF REPRESENTATIVES

ON

**"U.S. Energy Abundance: Regulatory, Market and Legal Barriers to
Export"**

June 18, 2013

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, I am Jennifer Moyer, Acting Chief of the Regulatory Program for the U.S. Army Corps of Engineers. Thank you for the opportunity to discuss the Army Corps of Engineers (Corps) regulatory authorities under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). I will specifically discuss the Corps' role in the permitting of shipping facilities, with a focus on coal and the issues currently being discussed in the Pacific Northwest.

Background on Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act

Section 10 of the Rivers and Harbors Act of 1899 gives the Corps authority to ensure that there are no obstructions to the navigable waters of the United States. Under this authority, the Corps regulates work and/or structures within navigable waters related to activities such as: construction of piers, jetties, and weirs; dredging projects; and other such projects. Section 404 of the Clean Water Act (CWA) established a program to regulate the discharge of dredged or fill material into "waters of the United States." Under the Section 404 authority, the Corps regulates discharges of dredged or fill material into jurisdictional waters of the United States including wetlands. Such discharges often are associated with activities such as highway construction; residential, commercial, and industrial developments; energy projects; and a variety of other projects. In addition to these two authorities, the Corps regulates the transport of dredged material for dumping in ocean waters under Section 103 of Marine Protection Research and Sanctuaries Act (MPRSA). In reviewing project proposals, the Corps must comply with other applicable statutes and regulations.

The Secretary of the Army, acting through the Chief of Engineers, has delegated responsibility for making final decisions on permit applications to the commanders in the 38 Corps districts. The regulatory program is implemented day-by-day at the district level by staff that knows their regions and resources, and the public they serve. Nationwide, the Corps makes tens of thousands of final permit decisions annually. In all but the very rarest of circumstances, these decisions are made at the district level. When implementing the Corps regulatory program, the Corps is neither an opponent nor a proponent for any specific project – the Corps' responsibility is to process permit applications in accordance with all applicable laws and regulations, in order to make fair and objective and timely permit decisions. This responsibility of the Corps district includes preparing the appropriate environmental analysis and other appropriate work under the applicable laws and regulations.

Existing Export Facilities for Coal

Information produced by the U.S. Energy Information Administration indicates that seaports on the Gulf Coast and East Coast have accounted for most U.S. coal exports over the past ten years. These facilities are located in the Baltimore, Norfolk, Mobile, and New Orleans areas. About 65 percent of the total U.S. exports of 107 million tons in 2011 was coking coal, which is used in making iron and steel. In 2012, U.S. exports increased to about 126 million tons due to a substantial increase in the amount of steam coal (used for generating electricity) exported at the Norfolk and New Orleans ports. Depending on the originating and port locations, this coal is shipped to the port facilities over existing rail networks or by barge on the inland waterways

navigation system. The New Orleans and Norfolk Districts of the Corps have received some objections while processing applications for Section 10 and/or Section 404 permits for the construction and operation of expanded coal export facilities in the New Orleans and Norfolk areas.

National Environmental Policy Act (NEPA)

NEPA's mandate is to ensure a fully informed and well-considered decision and that agency conclusions be supported by critical thinking and reasoned analysis of the potential environmental consequences of a proposed agency action, such as a decision on a pending permit based on project-specific facts. NEPA does not mandate any particular result but ensures agencies fully explain the choices made. Corps NEPA documents should be fully transparent with the public, inform the decision-maker, and provide a sound basis for the decision on the Department of the Army permit application. They should also address, concurrently whenever practicable, the other relevant environmental requirements including any necessary consultation or coordination.

The Corps must identify the federal action under consideration and must decide, for purposes of NEPA, whether the Corps has sufficient "control and responsibility" for activities outside of its regulatory jurisdiction such that the issuance of a Corps permit would amount to approval of those activities. For purposes of the Corps regulatory program, the definition of "federal action" is straightforward. The Corps focuses its NEPA analysis on the federal actions defined either by the discharge of dredged and/or fill materials into waters of the United States, and/or by any work in navigable waters.

The specific activity requiring authorization by a Corps permit may, at times, be merely one component of a larger project involving upland activities. Identifying aspects of a broader project over which the Corps may have "control and responsibility" by virtue of its permitting authorities requires careful consideration. Pursuant to the provisions of its Appendix B NEPA regulations, the Corps includes in its reviews the specific activity requiring a Corps permit and those portions of the activity over which the Corps has sufficient control and responsibility to warrant review by the Corps under NEPA.

Proposed Shipping Facilities in the Pacific Northwest Under Review

The Corps is evaluating proposals at three separate and independent shipping facilities in the Pacific Northwest that would require Department of the Army (DA) permit authorizations, as issued by the Corps. Because those three new facilities would involve placing structures in or over navigable waters and/or the discharge of dredged or fill material in other waters of the United States subject to Clean Water Act (CWA) jurisdiction, all three proposed projects require DA permits under Section 10 of the Rivers and Harbors Act of 1899 (RHA) and/or Section 404 of the CWA. The three proposed export terminals in Washington and Oregon have created considerable public interest, in part because the facilities' primary purpose would be to receive coal via rail from the Powder River Basin in Wyoming and Montana, and to ship that coal via barges and Panamax vessels for use in other locations, including Asia. Two of these proposed terminals would be located on the Columbia River – Coyote Island at Port of Morrow, OR (~mile point 270), being evaluated by the Portland District; and Millennium Bulk Terminal at Longview, WA (~mile point 63), being evaluated by the Seattle District. The

third of the proposed terminals, called the Gateway Pacific Terminal, located near Bellingham, WA on the Puget Sound, is also being evaluated by the Seattle District.

Although the proposed shipping facilities share a similar purpose, the facts and circumstances related to each differ substantially. Each of the three proposed facilities would cause very different types of impacts that are subject to regulation under the Corps Section 10 and/or Section 404 regulatory authorities. Section 103 of the MPRSA is not triggered by any of the proposed facilities.

Other potential shipping facilities (e.g. Coos Bay, Grays Harbor, etc.) have also been discussed during in the past several months; however, the Corps is not currently engaged in discussions with or processing permit applications for any facilities beyond the three identified above.

When considered in accordance with the laws and regulations discussed above, many of the activities of concern to the public, such as rail traffic, coal mining, shipping coal outside of U.S. territory, and the ultimate burning of coal overseas, are outside the Corps' control and responsibility for the permit applications related to the proposed projects. We note that coal mining in the Powder River Basin has been occurring for many years, with that coal being shipped by rail to many different destinations. The potential change in rail traffic patterns is beyond the control and expertise of the Corps, and requires no involvement from the Corps. Coal produced from the Powder River Basin currently transits the rail system to various destinations. Similarly, the possible future shipment of coal by oceangoing vessels across the Pacific Ocean beyond the limits of U.S. navigable waters, and the possible future off-loading, distribution, and burning of coal in Asia are attenuated and far removed from the activities regulated by

the Corps at any of the three shipping facilities. Commercial markets drive the need for and destination of coal which could change regardless of the Corps decision regarding the proposed activities in waters within our jurisdiction.

The draft NEPA EIS documents that will be available for public review will explain the Corps' approach to these issues. Indeed, the Corps expects to receive many comments on these issues from the public and from sister federal, state, and local agencies given the substantial interest in the production, transport, and use of coal that may transfer through a port facility that requires a Corps permit for some aspect of its construction. At that point, the public will be able to provide detailed feedback for the Corps to consider as it develops its final NEPA documents.

Preparation of NEPA Documents for the Three Pacific Northwest Shipping Facilities

The Corps Seattle and Portland Districts are currently reviewing three separate proposals (one for each of the three proposed terminals) and preparing a project-specific NEPA document for each. Based on anticipated direct, indirect and cumulative impacts, the Corps is preparing a separate draft EIS for the Gateway project and another draft EIS for the Millennium project. For the Coyote Island project, the Portland District is currently preparing an environmental assessment. When that document is completed, the district will determine whether a site-specific EIS is required, or instead to prepare a Finding of No Significant Impact (FONSI). The scope of analysis that the Corps will establish in the review of each proposal will include the specific activity requiring a DA permit (issued by the Corps), the environmental impacts of that specific activity, and those portions of the entire project (that is, the portions that are beyond the

regulatory jurisdiction of the Corps) over which there is sufficient federal control and responsibility to warrant Corps NEPA review. The preparation of the NEPA documents for these projects is at an early stage.

The Corps has received feedback from members of the public suggesting that it should prepare a single EIS to assess the potential impacts of all three shipping facilities in the Pacific Northwest. Two concepts established by the Council on Environmental Quality NEPA regulations provide the framework for determining how to respond to these suggestions. First, the regulations require a programmatic EIS. One type of programmatic NEPA review is for a "federal action" that consists of "adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or directive." 40 C.F.R. 1508.18(b)(3). The second type of programmatic NEPA review is often referred to as "area-wide" or "regional", where the NEPA review focuses on a range of federal actions that share certain commonalities. These would include broad actions occurring in the same general location or having relevant similarities such as timing or impacts. 40 C.F.R. §§ 1502.4(b)-(c) and 1508.25. There is no compelling justification for the preparation of a "programmatic EIS" with respect to the three proposed facilities under review. The Corps does not build or finance the construction of these or other land-side port facilities, nor is it allocating its resources to implement any plan for development. Rather, the Corps is dealing with them in its regulatory program responsibilities. They are independent projects in different locations, whose impacts are not related. (See 40 C.F.R. 1502.4(b) and 1508.18(b)(3)).

Regulations at 40 C.F.R. 1508.25 address how a federal agency that has decided to produce an EIS should determine the "scope" of that EIS in terms of the "range of actions" to be considered. This "range of actions" does not include "unconnected single actions." 40 C.F.R.1508.25. Federal actions that should be considered together include "connected actions," "cumulative actions" (actions with cumulatively significant impacts), and "similar actions" (those that have similarities that logically could be considered together, such as actions with common timing or geography) 40 C.F.R.1508.25. "Connected actions" are separate actions that may automatically trigger another, actions that cannot or will not proceed absent related actions, or actions that are "interdependent parts of a larger action and depend upon the larger action for their justification." (The labels "area-wide" or "regional" are sometimes used to describe one EIS that assesses multiple proposed federal actions in a geographic area, because those actions are connected or similar, or would have cumulative environmental effects). The Corps has determined that neither a Programmatic nor an area-wide/regional EIS are appropriate when considering the proposed permits in light of based on these NEPA regulations.

In addition to the shipping facilities, there is also a separate permit application for a new BNSF rail spur at the Gateway Terminal. In this context, the Gateway Pacific and BNSF proposals are being considered in a single NEPA document because they fall within the regulatory definitions of "cumulative actions," "connected actions," and "similar actions." The applicants for both of these projects propose fill of wetlands on a defined site, with implications for cumulative impacts to that resource; both projects are "connected" in that they are parts of a larger development of a port facility and "similar"

in that they have common timing and are proposed for the same site.

However, the other permit applications, for the Millennium Bulk Terminal and the Port of Morrow proposal, are being considered in separate project specific NEPA documents – separate both from each other and from the analysis of the Gateway Pacific/BNSF project. The three proposed facilities are in different watersheds and are not sufficiently close to one another from a cumulative impacts perspective to justify one EIS for all three permit applications.

Summary

We are certainly aware of and appreciate the concerns that members of the public have expressed in association with the proposed shipping facilities in the Pacific Northwest. Our Seattle and Portland Districts are reviewing these proposals, and are carrying out the NEPA “scoping” process to determine which potential environmental effects to analyze in detail. As I clarified above, the scope of our analysis with respect to these proposals is defined by law and regulation. The Corps districts will therefore carefully consider each of these proposals on its merits, while appropriately bounding the scope of their analysis and their consideration of the impacts.

I appreciate the opportunity to be here today and I will be happy to answer any questions you may have.

Mr. WHITFIELD. Thank you, Ms. Moyer.
Mr. Wright, you are recognized for 5 minutes.

STATEMENT OF JEFF C. WRIGHT

Mr. WRIGHT. Chairman Whitfield, Ranking Member Rush, and members of the subcommittee, my name is Jeff Wright and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The Office of Energy Projects is responsible for, among other things, the authorization and oversight of the construction and operation of onshore and near-shore liquefied natural gas terminals. Today I will discuss the process which the Commission uses to review applications for facilities for the export of LNG.

With respect to LNG, the Commission does not authorize the import or the export of LNG. That authority rests with the Department of Energy. Accordingly, applications for authority to import or export LNG must be submitted to DOE, while applications for the construction and operation of import or export related facilities must be submitted to the Commission.

The Commission's review process is comprised of three distinct phases: pre-filing review, application review, and post-authorization review. Each stage of the review process requires its submission of detailed information that involves a review and consultation with key stakeholders and other federal agencies, such as the Coast Guard and the Department of Transportation.

Section 311 of the Energy Policy Act of 2005 requires perspective applicants seeking Commission authority to construct and operate an LNG terminal to participate in a pre-filing process for a period of at least 6 months. This is the beginning of the Commission's staff review, and it involves not only an early analysis of the project proposal, but also provides a transparent forum for consultation and discussion. The pre-filing process is designed to engage all stakeholders in order to identify and resolve potential issues related to the construction and operation of a facility before the filing of a formal application. During this process, project-specific issues are raised throughout the environmental scoping process and/or by other means, such as open houses, public meetings, site visits, and/or filed comments. At this stage, information needs are identified and studies are conducted as necessary to fill data gaps.

The end of the pre-filing process occurs when the applicant files its formal application. Once the formal application has been filed, any person can move to intervene in the Commission's proceedings. Interveners become parties to a proceeding and have the right to request rehearing of Commission orders and seek relief of final agency actions in U.S. Circuit Courts of Appeal. In addition, all interested parties have the opportunity to place their concerns regarding the project into the record and file any evidence they feel is important for the Commission to consider.

During the application review phase, the Commission staff analyzes the formal application and once sufficient information to address environmental and safety issues exists in the record, it establishes a schedule for the production of the environmental review documents. The environmental document is then issued for public

comment, and comments received on that document are addressed. The final environmental document contains staff's conclusions regarding the feasibility, safety, and environmental impacts associated with the proposed facilities. The document also includes any recommended measures for ensuring safety and mitigating any environmental impacts identified through analysis of the proposal and consideration of concerns raised during the pre-filing and application review.

After issuance of the final environmental document, the Commission considers the entire record of the proceeding. If the Commission finds that the environmental and safety impacts from the construction and operation of the LNG facility are acceptable and authorizes the proposal, the project specific mitigation measures recommended in the environmental document are included as conditions to this authorization.

During the post-authorization review phase, detailed plans for the Commission-required mitigation are developed. Approval of these detailed plans must be received before construction can commence. During the construction period, mitigation measures are implemented and monitored. As part of its ongoing detailed post-authorization project review, staff inspects the construction and progress to ensure that all required measures are implemented. Inspections during construction entail the review of quality assurance and quality control plans, nonconformance reports, and cool down and commissioning plans to ensure that the installed design is consistent with the safety and operability characteristics of the proposal approved by the Commission.

Finally, at the end of construction, the project sponsor will file a request for authorization to commence operation of the facility. The information contained in this request must demonstrate how the project sponsor has complied with all of the Commission's requirements and must be consistent with the results of the Commission's inspections. This final authorization from the Commission will not be granted unless all measures to ensure safe and secure operations and the necessary environmental protections are in place and serving their intended purpose. Once a facility is placed in service, it is subject to continuing inspections by the FERC staff for the life of the facility. This ensures that the facility continues to be operated and maintained in accordance with the Commission's original authorization.

This concludes my testimony. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Wright follows:]

Testimony of

**Jeff C. Wright
Director, Office of Energy Projects**

**Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC, 20426
202-502-8700**

**Before the Committee on Energy and Commerce
Subcommittee on Energy and Power**

United States House of Representatives

Hearing on

“U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export”

June 18, 2013

Mr. Chairman and Members of the Subcommittee:

My name is Jeff Wright and I am the Director of the Office of Energy Projects (OEP) at the Federal Energy Commission (FERC or Commission). I appear today as a Commission staff witness speaking with the approval of the Chairman of the Commission. The views I express are my own and not necessarily those of the Commission or of any individual Commissioner.

The Office of Energy Projects is responsible for the licensing, administration, and safety of non-federal hydropower projects; the certification of interstate natural gas pipelines and storage facilities; and the authorization and oversight over the construction and operation of on-shore and near-shore liquefied natural gas (LNG) terminals. Thank you for the opportunity to appear before you today to discuss the process which the Federal Energy Regulatory Commission uses to review applications for facilities for the export of LNG.

With the creation of the Department of Energy (DOE) in 1977, Congress directed all applications for authorization for the exportation or importation of natural gas to or from a foreign country to be submitted to the Secretary of Energy. In accordance with the Natural Gas Act and 15 U.S.C. Part 717, no entity may import or export natural gas without first having secured an order from the DOE authorizing it to do so. The Secretary of Energy subsequently delegated to the Commission the authority to approve or deny applications for the construction and

operation of those facilities used for the import or export of natural gas.¹ This delegation was most recently re-affirmed in 2006 by DOE Delegation Order No. 00-004.00A.

With respect to LNG, the Commission is an environmental and safety regulatory agency. The Commission does not authorize the import or the export of LNG as a commodity; that authority was retained by the DOE. Accordingly, applications for authority to import or export the commodity of natural gas must be submitted to the DOE, while applications for the construction and operation of the facilities necessary to perform such imports or exports must be submitted to the FERC.

The FERC requirements for filing an application for the authorization of LNG import or export facilities are located in Title 18, C.F.R., Part 153. Section 153.6 requires an applicant to state whether DOE authorization for the import or export of natural gas is required and whether DOE has granted the required authorizations. Section 3 of the Natural Gas Act (NGA) states that the importation of LNG is consistent with the public interest. Section 3 also provides that LNG exports to countries with which the United States has executed a free trade agreement are in the public interest. In those situations where applicants are seeking to export (or import) LNG to non-free trade agreement countries, Section 3(a) of the NGA requires the DOE to make a determination on whether such exports (or imports) will not be consistent with the public interest.

¹ DOE Delegation Order No. 0201-112. *Federal Register*, 49 Fed. Reg. 6684 (1984).

The Commission's review process is identical for either LNG import or export terminals. This process is comprised of three distinct phases: pre-filing review, application review, and post-authorization review. Each stage of the review process requires the submission of progressively more detailed information and involves an exhaustive review and consultation with key stakeholders and other federal agencies such as the U.S. Coast Guard and the U.S. Department of Transportation. How these phases build upon each other is described below.

Section 311 of the Energy Policy Act of 2005 requires prospective applicants seeking Commission authority to construct and operate an LNG terminal to participate in the Commission's Pre-Filing Process for a period of at least six months. This is the beginning of the Commission staff review and it involves not only an early analysis of the project proposal, but also provides a transparent forum for consultation and discussion among participants in the process (namely, the prospective applicant, FERC staff, affected landowners, other federal agencies, state and local entities, and the public). The Commission's Pre-Filing Process is designed to engage all stakeholders at the earliest point to identify and resolve potential issues related to the construction and operation of a facility before the filing of a formal application. During this process, project-specific issues are raised through the environmental scoping process and/or other means, such as open-houses, public meetings, site visits, or filed comments. Information needs are identified and studies are conducted as necessary to fill data

gaps. The end of the Pre-Filing Process occurs when the applicant files its formal application.

Once the formal application has been filed, any individual or organization can move to intervene in the Commission proceeding. Intervenors become parties to a proceeding and have the right to request rehearing of Commission orders and seek relief of final agency actions in the U.S. Circuit Courts of Appeal. In addition to intervention, all interested entities have the opportunity to place their concerns regarding the project into the record and file any evidence they feel is important for the Commission to consider,

During the application review phase, the Commission staff reviews the formal application and, once sufficient information to address environmental and safety issues exists in the record, establishes a schedule for the production of the environmental review documents. The environmental document is then issued for public comment, and comments received on that document are addressed.

The final environmental document contains staff's conclusions regarding the feasibility, safety, and environmental impacts associated with the proposed facilities. The document also includes any recommended measures for ensuring safety and mitigating any environmental impacts identified through analysis of the proposal and consideration of concerns raised during the pre-filing and application review.

After issuance of the final environmental document, the Commission considers the entire record of the proceeding. If the Commission ultimately finds

that the environmental and safety impacts from the construction and operation of the LNG facility are acceptable and authorizes the proposal, the project-specific mitigation measures recommended in the environmental documents, and any others identified by the Commission as necessary, are included as conditions to the authorization.

Development of the information and the consultation required by these mitigative measures are the subject of the third phase of the Commission's process: post-authorization review. It is during the post-authorization review phase that detailed plans for the Commission-required mitigation are developed. Approval of these detailed plans, and the specified conditions of an order, must be received before the Commission's second authorization, the authorization to commence construction, will be issued. Authorization to commence construction will not be issued until the conditions requiring pre-construction approval have been satisfied, with input as appropriate from all named agencies and other parties.

During what is typically a multi-year construction period, mitigation measures are implemented and monitored. Frequently during this period, on-the-ground conditions are identified that require modifications of the mitigation plans that were developed prior to the start of construction. As part of its ongoing, detailed post-authorization project review, staff inspects the construction in progress, as do third-party inspectors, ensuring that all required measures are implemented.

FERC staff's inspections during construction entail the review of quality assurance and quality control plans, non-conformance reports, and cool down and commissioning plans to ensure that the installed design is consistent with the safety and operability characteristics of the proposal approved by the Commission. Finally, at the end of construction, the project sponsor files a request for authorization to commence operation of the facility.

The information contained in this request must demonstrate how the project sponsor has complied with all of the Commission requirements and must be consistent with the results of the Commission's inspections. This final authorization from the Commission will not be granted unless all measures to ensure safe and secure operations, and the necessary environmental protections, are in place and serving their intended purpose.

Once a facility is placed in service, it is subject to continuing inspections by FERC staff for the entire life of the facility. This ensures that the facility continues to be operated and maintained in accordance with the Commission's original authorization.

This concludes my testimony. I will be happy to answer any questions you may have.

Mr. WHITFIELD. Thank you, Mr. Wright.
Mr. Smith, you are recognized for 5 minutes.

STATEMENT OF CHRISTOPHER A. SMITH

Mr. SMITH. Thank you, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. I appreciate the opportunity to discuss the Department of Energy's program regulating the export of natural gas, including liquefied natural gas.

The Department's authority to regulate the export of natural gas arises from the Natural Gas Act, which provides two statutory standards for processing applications to export LNG from the United States: one for export to free trade agreement nations, and one for export to nations with which the United States does not have a free trade agreement.

By law, applications to export natural gas to free trade agreement nations are deemed consistent with the public interest and the Secretary of Energy must grant authorization without modification or delay. As of today, the Department of Energy has approved 24 long-term applications to export a lower 48 LNG to free trade agreement countries, and there are three other currently pending.

For applications to export natural gas to non-FTA nations, the Secretary of Energy must grant the authorization unless, after opportunity for hearing, the proposed export is found to not be consistent with the public interest.

The Department's review of applications to export LNG to non-FTA countries is conducted through a publically transparent process which includes full public interest review. To date, the Department has granted two long-term applications to export domestically produced lower 48 LNG to non-FTA countries. In the Sabine Pass order, the Department of Energy stated that it would evaluate the cumulative impact of that authorization and any future authorizations for export authority when considering subsequent applications. Following the issuance of that order, the Department of Energy undertook a two-part study of the cumulative economic impact of LNG exports, to which were received over 190,000 comments.

On May 17, the Department of Energy granted the second long-term application to export LNG, which was granted to Freeport LNG in a conditional order, pending successful environmental review. The order was granted after an extensive, careful review of the application, the LNG export study, public comments for and against the application, and public comments of the cumulative impact of LNG exports filed in the LNG export study.

Currently, the Department of Energy has 20 non-FTA export applications pending. Going forward, the Department will continue processing the pending applications on a case-by-case basis, following the order of precedence previously established and set forward on the Department of Energy's Web site. Finally, the Department will assess the impact of any market developments on subsequent public interest determinations as further information becomes available.

Due to the adjudicatory nature of this process, Mr. Chairman, I will be unable to comment today on issues that are presently being addressed in our pending proceedings. However, I can speak to the Department of Energy's statutory authority, our process to review

applications, our two-party LNG export study, the comments we received on those studies, and other recent developments in LNG export. With respect to these topics, the Department and I are committed to being as responsive as possible to any questions that the committee may have.

In conclusion, Mr. Chairman, I would like to emphasize that Department of Energy is committed to moving this process forward as expeditiously as possible. We understand the significance of this issue, as well as the importance of getting it right. Thank you.

[The prepared statement of Mr. Smith follows:]

**Statement of
Christopher Smith
Assistant Secretary for Fossil Energy (Acting)
Office of Fossil Energy
U.S. Department of Energy**

Before the

**Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives**

**The Department of Energy's Program Regulating Liquefied Natural Gas Export
Applications**

June 18, 2013

Thank you Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee; I appreciate the opportunity to be here today to discuss the Department of Energy's (DOE) program regulating the export of natural gas, including liquefied natural gas (LNG).

Recent Developments in LNG Exports

The boom in domestic shale gas provides unprecedented opportunities for the United States. Over the last several years, domestic natural gas production has increased significantly, outpacing consumption growth, resulting in declining natural gas and LNG imports. Production growth is primarily due to the development of improved drilling technologies, including the ability to produce natural gas trapped in shale gas geologic formations.

Historically, the DOE has played a critical role in the development of technologies that have enabled the United States to expand development of our energy resources. Between 1978 and 1992, public research investments managed by the Department contributed to the development of hydraulic fracturing and extended horizontal lateral drilling technologies that spurred private sector investments and industry innovation, unlocking billions of dollars in economic activity associated with shale gas.

Today, domestic natural gas prices are lower than international prices of delivered LNG to overseas markets. As in the United States, demand for natural gas is growing rapidly in foreign markets. Due primarily to these developments, DOE has received a growing number of applications to export domestically produced natural gas to overseas markets in the form of LNG.

DOE's Statutory Authority

DOE's authority to regulate the export of natural gas arises under section 3 of the Natural Gas Act (NGA), 15 U.S.C. § 717b, and section 301(b) of the DOE Organization Act, 42 U.S.C. §

7151. This authority is vested in the Secretary of Energy and has been delegated to the Assistant Secretary for Fossil Energy.

Section 3(a) of the NGA sets forth the standard for review of most LNG export applications:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.

Section 3(a) thus creates a rebuttable presumption that a proposed export of natural gas is in the public interest. Section 3(a) also authorizes DOE to attach terms or conditions to the order that the Secretary finds are necessary or appropriate to protect the public interest. Under this provision, DOE performs a thorough public interest analysis before acting.

In the Energy Policy Act of 1992, Congress introduced a new section 3(c) to the NGA. Section 3(c) created a different standard of review for applications to export natural gas, including LNG, to those countries with which the United States has in effect a free trade agreement requiring the national treatment for trade in natural gas. Section 3(c) requires such applications to be deemed consistent with the public interest, and requires such applications to be granted without modification or delay.

Free Trade Agreement (FTA) Countries

There are currently 18 countries with which the United States has in place free trade agreements that require national treatment for trade in natural gas for purposes of the Natural Gas Act. These 18 countries include: Australia, Bahrain, Canada, Chile, Colombia, the Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore.

There also are two countries — Israel and Costa Rica — that have free trade agreements with the United States that do not require national treatment for trade in natural gas for purposes of the Natural Gas Act.

Because complete applications under section 3(c) must be granted without modification or delay and are deemed to be in the public interest, DOE does not conduct a public interest analysis of those applications.

DOE Process to Review Applications to Export LNG to non-FTA Countries

DOE's review of applications to export LNG to non-FTA countries is conducted through a public and transparent process. Upon receipt of an application, DOE issues a notice of the

application in the *Federal Register*, posts the application and all subsequent pleadings and orders in the proceeding on its website, and invites interested persons to participate in the proceeding by intervening and/or filing comments or protests. Section 3(a) applicants are typically given an opportunity to respond to any such comments or protests and, after consideration of the evidence that has been introduced into the record, DOE issues an order either granting the application as requested, granting with additional terms or conditions, or denying the application.

Under the Natural Gas Act, DOE's orders are subject to a rehearing process that can be initiated by any party to a proceeding seeking to challenge DOE's determinations. Court review is available as well after the rehearing process is exhausted.

Public Interest Criteria for NGA Section 3(a) Applications

For applications requesting authority to export LNG to countries that do not have free trade agreements requiring national treatment for trade in natural gas, DOE conducts a full public interest review. A wide range of criteria are considered as part of DOE's public interest review process, including but not limited to:

- Domestic need for the natural gas proposed for export
- Adequacy of domestic natural gas supply
- U.S. energy security
- Impact on the U.S. economy (GDP), including impact on domestic natural gas prices
- International considerations
- Environmental considerations

These criteria are not statutory but rather have been developed over several decades and supplemented and refined by subsequent agency adjudication. It is important to emphasize, however, that these criteria are not exclusive. Other issues raised by commenters and/or interveners or DOE that are relevant to a proceeding may be considered as well.

Jurisdiction over the LNG Commodity Export Versus the LNG Export Facility

The DOE exercises export jurisdiction over the commodity (natural gas), whereas other Federal, state, and local organizations have jurisdiction over the facilities used in the import or export of the commodity, depending on the facility location.

The Federal Energy Regulatory Commission (FERC) is responsible for authorizing the siting, construction, expansion, and operation of LNG import and export terminals pursuant to section 3(e) of the Natural Gas Act. FERC may approve those applications in whole or in part with such modifications and upon such terms and conditions as it finds necessary or appropriate.

The U.S. Department of Transportation's Maritime Administration (MARAD) is responsible under the Deepwater Port Act of 1974, as amended, (33 U.S.C. § 1501 *et seq.*) for the licensing

system for ownership, construction, operation and decommissioning of deepwater port structures located beyond the U.S. territorial sea, including deepwater LNG export facilities.

Sabine Pass Authorization – First Long-Term LNG Export Authorization

DOE granted the first long-term application to export domestically-produced lower-48 LNG to non-FTA countries to *Sabine Pass Liquefaction, LLC*, (*Sabine Pass*) in DOE/FE Order Nos. 2961 (May 20, 2011), 2961-A (August 7, 2012), and 2961-B (January 25, 2013). The LNG export volume authorized is equivalent to 2.2 billion cubic feet per day (Bcf/d) of natural gas for a period of 20 years. In the first of the *Sabine Pass* orders, DOE stated that it would evaluate the cumulative impact of the Sabine Pass authorization and any future authorizations for export authority when considering subsequent applications.

LNG Export Study

Following issuance of the *Sabine Pass* order, DOE undertook a two-part study of the cumulative economic impact of LNG exports. The first part of the study was conducted by the Energy Information Administration (EIA) and looked at the potential impact of additional natural gas exports on domestic energy consumption, production, and prices under several prescribed export scenarios. The second part of the study, performed by NERA Economic Consulting under contract to DOE, evaluated the macroeconomic impact of LNG exports on the U.S. economy with an emphasis on the energy sector and natural gas in particular. The NERA study was made available on December 5, 2012.

On December 11, 2012, DOE published in the *Federal Register* a Notice of Availability of the EIA and NERA studies, and inserted both parts of the study into 15 then-pending LNG export application dockets for public comment. An initial round of comments on the study ended on January 24, 2013, and reply comments were due February 25, 2013.

Comments to the LNG Study

In response to the Notice of Availability, DOE received over 188,000 initial comments and approximately 2,700 reply comments. Proponents of LNG exports generally endorsed the results of the two-part study, particularly the conclusion of the NERA study that increasing levels of exports will generate net economic benefits for the United States. On the other hand, comments filed by opponents of LNG exports raised a number of issues, including challenges to the assumptions and economic modeling underlying the two-part study and assertions that the two-part macroeconomic study should have further examined regional, sectoral, or environmental issues.

Second Long-Term LNG Export Authorization

On May 17, 2013, DOE granted the second long-term application to export LNG, which was granted to *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC* in DOE/FE Order No. 3290 (a conditional order pending a satisfactory environmental review). The order was granted

after an extensive review of the application to export LNG from the Freeport LNG Terminal, the LNG Export Study, public comments for and against the application, and public comments on the cumulative impact of LNG exports submitted in response to the LNG Export Study. DOE determined that exports from the terminal at a rate of up to 1.4 billion cubic feet per day for a period of 20 years was not inconsistent with the public interest.

LNG Export Applications Status

Consistent with the NGA, as of June 7, 2013, DOE has approved 24 long-term applications to export lower-48 LNG to free trade agreement countries equivalent to 29.41 billion cubic feet per day of natural gas from 21 new liquefaction facilities. In addition, DOE has three long-term applications pending to export lower-48 LNG to free trade agreement countries.

Most of the applicants seeking authorization to export LNG from proposed facilities to free trade agreement countries have also filed to export LNG to non-free trade agreement countries in the same volume from the same facility to provide optionality on the final destination country. The volumes of the applications to export to free trade agreement countries and non-free trade agreement countries are therefore not additive.

As of June 7, 2013, DOE has approved two long-term applications to export lower-48 LNG to non-free trade agreement countries equivalent to 3.6 billion cubic feet per day of natural gas from two proposed liquefaction facilities. DOE also currently has 20 applications pending to export LNG equivalent to an additional 25.61 billion cubic feet per day of natural gas to non-free trade agreement countries.

DOE Path Forward

The Department will continue processing the pending non-FTA LNG export applications on a case-by-case basis, following the order of precedence previously established and set forth on DOE's website. As further information becomes available at the end of 2013, including the EIA's Annual Energy Outlook Report, the Department will assess the impact of any market developments on subsequent public interest determinations.

Conclusion

Due to the adjudicatory nature of this process, I am unable to comment today on issues that are presently being addressed in our pending proceedings. Those issues include but are not limited to the merits of pending applications, the validity of the two-part LNG export study, the study's adequacy as a basis for decision, and the appropriate scope of environmental review. However, I can speak to DOE's statutory authority, our process to review applications to export LNG to non-FTA countries, our two-part LNG export study, the comments we received on those studies, and other recent developments. I am committed to being as responsive as possible to any questions you or the Committee may have.

In conclusion Mr. Chairman, I would like to emphasize that DOE is committed to moving this process forward as expeditiously as possible. DOE understands the significance of this issue — as well as the importance of getting these decisions right.

Mr. WHITFIELD. Thank you all very much for your testimony. We appreciate your being with us, as I said.

Ms. Moyer, let me ask you a couple questions here. You said the—what was the word you used, deputy commander or division commander? You had 38 division commanders, is that right?

Ms. MOYER. District commanders.

Mr. WHITFIELD. District commanders. And they have the authority to make the final decision on, for example, Port Morrow's application?

Ms. MOYER. Yes, sir.

Mr. WHITFIELD. OK. Now the President recently had made comments that he was considering requiring all federal agencies to consider the climate change effect, including global impacts of their actions. This is an unprecedented step with far reaching geopolitical implications that it effectively puts the U.S. in the position of evaluating the energy consumption—and environmental policies of our trading partners. Now in your testimony, you stated that the ultimate burning of coal overseas is outside the Corps' control and responsibility. So does this mean for the purposes of NEPA that the Corps of Engineers does not intend to consider the climate change impacts related to any of the three, for example, proposed facilities in the West that have applied for license for export?

Ms. MOYER. With respect to climate change or greenhouse gas emissions, the Corps will limit its focus on emissions to those emissions that will be associated with the construction of the facilities for those impacts that will occur within our scope of analysis, our limited scope of analysis, but the appropriate application of our regulations have led us to the conclusion that the effects of the burning of the coal in Asia or wherever it may be is too far removed from our action to be considered as an indirect effect or cumulative effect of our action itself.

Mr. WHITFIELD. Right, which I think is a right decision. You also indicated in your testimony that the Corps is not planning to complete an area-wide environmental impact statement for the three export terminals currently pending before the Corps as one entity. Is that correct?

Ms. MOYER. Yes, sir.

Mr. WHITFIELD. So you do intend to proceed each one of those individually?

Ms. MOYER. Yes, sir.

Mr. WHITFIELD. OK, which I think also is the right decision. I know that there are groups out there that want an area-wide environmental impact statement, which certainly makes it a lot easier to create obstacles and lawsuits and so forth, so I appreciate that very much.

Mr. Wright and Mr. Smith, would one of you just clarify for us the different responsibilities that you have for the liquefied natural gas export facility? Mr. Wright, Department of Energy, I guess, authorizes, is that correct?

Mr. WRIGHT. The Department of Energy—and I will let Mr. Smith speak to that, but in my knowledge, the Department of Energy authorizes the import or the export of the physical commodity. FERC, or the Commission, authorizes the facilities to facilitate the import or the export of the commodity.

Mr. WHITFIELD. Mr. Smith?

Mr. SMITH. Mr. Chairman, that is exactly correct.

Mr. WHITFIELD. OK. And so far, you have issued—you have authorized two facilities to non-free trade areas, is that correct?

Mr. WRIGHT. I believe the Department of Energy has authorized two exports to non-free trade agreement projects. The Commission has authorized the construction of one facility, and that is Cheniere Sabine Pass facility for export.

Mr. WHITFIELD. Right. Yes, thanks for reminding me. Mr. Smith is at the Department of Energy, you are at FERC, so thank you.

OK, that is all the questions I have for now, so Mr. Rush, I would recognize you for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman. Your questions have been quite interesting, and the testimony has been informative, and it has touched on the issue of LNG exports from a myriad of perspectives.

My concern is I would like to also hear more about exporting LNG and how it would impact U.S. consumers. Unlike oil prices, which are set on the global market, natural gas prices are set on a regional scale in North America and Europe and Asia. Today, Americans are paying very low prices for natural gas, less than \$4 per gallon as opposed to \$10 in Europe and \$12 or \$15 in east Asia. Most experts, however, expect this price to increase over the coming years with the EIA estimating that Henry Hub spot prices for natural gas will increase by 2.4 percent as producers begin drilling in more difficult terrain.

The question I have is how will exporting LNG impact the cost of natural gas for American families and consumers, and American businesses and manufacturers? Will this impact be significant, and will it be widespread across many different sectors of our economy? Mr. Smith, do you want to take a stab at that?

Mr. SMITH. Yes, thank you, Congressman, for that question. So as the Department of Energy goes through its process of evaluating these applications to export LNG, we are keenly aware and concerned about the potential impacts on American businesses, on American families, issues that might be related to changes in the price for natural gas. We certainly see that there is a tremendous opportunity that our country has in terms of our large natural gas resources. We do want to make sure they are being developed prudently and that we are making good public interest determinations in terms of export decisions.

As part of that, as I mentioned in my oral testimony, when we put out the Sabine Pass order, the Department of Energy declared that it would consider the cumulative impacts of LNG exports, which was the reason why we commissioned a comprehensive study that looked at not only impacts here in the United States, but also the global market's capability of absorbing LNG into other markets internationally.

The conclusion of that study was overall that the impacts of LNG exports would be positive for the consumers. There would potentially be some price impacts, as you have additional demand that is placed on our supply based on exporting LNG. But the conclusion of the study that was done for DOE concluded that overall for our economy and then for American consumers it would be positive.

Mr. RUSH. I have an additional question, and I think this question centers around the issue of jobs. Would there be an overall gain or loss in manufacturing jobs and other types of employment when we start exporting LNG and how would exporting LNG impact jobs overall in the U.S.? And you and any of the other witnesses can chime in on this, the answer to this.

Mr. SMITH. Well, thank you for the question, Congressman. So we did look very closely at economic impact and jobs. You certainly have a potential positive impact from the construction activity of building the terminal of actually producing the gas to be exported.

The concern that was raised by some opponents of the LNG exports was that potential price rises might have a negative impact on energy intensive users of natural gas like chemical plants or some manufacturers. The evidence that we looked at said that in balance that LNG exports at various levels would be positive for the economy—

Mr. RUSH. Mr. Wright, would you want to chime in on that?

Mr. WRIGHT. Well, we don't get into the economic analysis, but in terms of approving construction, obviously when you build something there will be jobs there, and—

Mr. RUSH. Ms. Moyer, would you?

Ms. MOYER. Certainly when we are evaluating applications from a private entity for a facility, we look at cost implications. We aren't looking at economic benefits and detriments.

Mr. RUSH. We don't have any infrastructure for any of this, right, and the question is where is the infrastructure going to come from, and how much would it cost?

Mr. SMITH. Well, if you look at the Sabine Pass terminal, the Sabine Pass terminal is actually an LNG import terminal that is being converted into an export terminal, so there is already a footprint that is going to be expanded in order to make that conversion to export LNG, but for all of these investments, there is going to be significant multi-billion dollar capital investments that are required in order to create the capacity to export LNG.

Mr. WHITFIELD. Gentleman's time is expired. At this time, I recognize the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman. Before I ask my questions, I want to say welcome to Mr. Bill Cooper who is on the second panel. He is a former staffer for the Republican staff of the Energy and Commerce Committee, and we are glad to have him here in the audience. I welcome him.

I want to ask a question of Mr. Smith. I have never seen a longer title. The Principal Deputy Assistant Secretary and the Acting Assistant Secretary for Fossil Energy. That is quite a mouthful. How many Deputy Assistant Secretaries for Fossil Energy are there, since you are the principal one?

Mr. SMITH. Well, I have a long title because I am wearing a lot of hats right now. I will say that the chairman nailed the title when he introduced me, so thank you for that.

Mr. BARTON. I do want to also make sure that I understand this. I am told that in a past life, you actually worked for Chevron, is that correct?

Mr. SMITH. I worked for Chevron and actually grew up in Ft. Worth, Texas, not exactly in your district, but—

Mr. BARTON. And yet you still got appointed to your position. Congratulations.

Mr. SMITH. I was actually appointed to my position because of my specific industry background, so—

Mr. BARTON. That is good. That is very good.

Well, my first question I will just—I will ask you, Mr. Smith. Does the law stipulate which entity has to be applied to first for an export permit? Do you have to get approved at DOE to export LNG, or could you go directly to FERC and ask to have the facility approved before DOE has approved that it could be exported, or does it matter?

Mr. SMITH. The law actually gives us some flexibility, and it gives applicants some flexibility. So the way that we have handled that question is we have to come up with some order in which we are going to consider applicants, so applicants are free to apply to FERC, they are free to apply to the Department of Energy, but we have given priority to those applicants who have already started that FERC pre-filing process, which is the process in which you are starting to spend real money. And we are also considering—so we are considering applicants on a first come, first serve basis, with priority given to those who have started the FERC pre-filing process.

Mr. BARTON. So the law doesn't stipulate it, and the practice is that an entity can apply either place, but the DOE gives preference to those applicants that have already started the facility permitting process at FERC, is that correct?

Mr. SMITH. We are considering first those applicants who have started the FERC pre-filing process.

Mr. BARTON. OK, and is this go either place first policy going to be maintained, or is there a possibility that you might clarify it and set some specific criteria as to what you have to do first?

Mr. SMITH. Well, the Department looked at a lot of factors when we were considering the order in which we were going to rule on applications. There is a lot of ways that we could have done that. We could have looked at business models, we could have done other evaluations, but the standard that we had was we wanted something that was open, that was transparent, that was simple, that was fair, and that helped us push projects that might be more valuable to the front of the queue. So we wanted a very subjective standard that didn't have some—sorry, a very objective standard that didn't have some subjectivity where we had to evaluate business models. So that is the order that we are moving forward. There is a PDF on the fossil energy Web site that lists those applications in order, and the process that we are using going forward.

Mr. BARTON. And Mr. Wright, does FERC have a time table for its review of its process that you try to get the permit to build and construct done in so many months, so many years? Do you have a guideline for that?

Mr. WRIGHT. Well we do, and we are in relatively new territory with export applications for construction. The import applications of the regasification facilities were much simpler, and given that we get all the information we would need, including the pre-filing period, we would authorize LNG import facilities somewhere between 18 to 24 months. With export facilities, the engineering is

much more critical, it is much more safety conscious, environmental conscious because of the use of refrigerants and natural gas liquids. What we are seeing is we are very dependent upon the applicant being able to finish its engineering studies to supply us with the information for our evaluation.

Mr. BARTON. My time is expired, but could you give us—you try to get your review done by X months, X—is there an X that you use, or is that not possible?

Mr. WRIGHT. We would love to get our review—formal application review done in 18 to 24 months.

Mr. BARTON. Eighteen to 24 months.

Thank you, Mr. Chairman.

Mr. WHITFIELD. Gentleman's time is expired. At this time, I recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Ms. Moyer, the Corps has been asked by Governor Inslee of Washington State and Governor Kitzhaber of Oregon and others to prepare an environmental impact statement that looks at the cumulative impacts of the proposed West Coast coal export terminals. They have asked that this analysis include an impact exporting U.S. coal to China on climate change. In your testimony, you appear to reject this request. You state "shipping coal outside of U.S. territory and the ultimate burning of coal overseas are outside the Corps' control and responsibility." Ms. Moyer, is this accurate? Has the Corps of Engineers decided not to examine the climate impacts of these coal export terminals as part of its environmental impact statements?

Ms. MOYER. What we have determined is that the effects of shipping of the coal outside of U.S. waters and the burning of the coal wherever its ultimate destination would be is outside of our scope of analysis. However, the climate change effects or the emissions associated with the activities within our scope of analysis, such as the construction activities associated with building the facilities, the emissions that may be associated with the increase in vessel traffic, those types of effects that may have an impact on climate change will be associated with our analysis for each of the facilities.

Mr. WAXMAN. Ms. Moyer, I think the Corps is making a big mistake. As I understand it, some of the most important responsibilities of the Corps of Engineers are to protect navigable waters, to protect cities like New Orleans from flooding, to protect beaches and coastlines, and to ensure that major waterways remain open to commerce. Is that correct?

Ms. MOYER. Yes.

Mr. WAXMAN. All of these values which the Corps is charged with protecting are threatened by climate change. Sea level rise can dislocate millions of families and cause hundreds of billions of dollars in damages. Extreme weather like Superstorm Sandy can destroy coastlines. Droughts can make even the Mighty Mississippi impassable. And according to the world's best climate scientists, all of these impacts are caused or exacerbated by climate change. Do you agree with this?

Ms. MOYER. Yes, I do.

Mr. WAXMAN. There are many causes of climate change, but experts tell us that the single biggest source of the emissions causing climate change is China, specifically burning coal in China. The governors of Oregon and Washington and many others have said that exporting coal to China could continue China's dependence of coal and worsen climate change. They have asked you to examine this issue, yet you are telling us you won't do this. My question to you is, how can you conclude that exporting coal to China does not contribute to climate change if you even refuse to look at this issue?

Ms. MOYER. I would say that the Corps' responsibilities and authorities with respect to our Civil Works Program are dramatically different from the regulatory framework that governs our work within the framework that we are looking at these proposals, and primarily the proposals that we look at within our regulatory program are for nonfederal activities. And within that context, these issues are not part of the Corps' scope of analysis. The burning of the coal in Asia, although very important aspects, they are not part of our framework. They are not within our scope of analysis, and they are too far attenuated to be considered indirect effects of the actions that we are—

Mr. WAXMAN. Well, I think you should reconsider your position. There is no bigger threat to navigable waters than climate change. Scientists tell us that those impacts will include sea level rise, more intense storms, increased flooding. Those impacts will all adversely affect navigable waters. It is the responsibility of the Corps of Engineers to protect the Nation's navigable waters. The Corps cannot meet its responsibility by ignoring these climate impacts.

Before billions of dollars are spent building new coal export facilities, we need to understand the impacts of those exports, including the climate impacts of burning all of that coal. I just think that makes common sense, so I would urge you to reconsider the position in light of the impact that I think is so important to the core goal of the Corps of Engineers.

Thank you, Mr. Chairman. I will yield back my time.

Mr. WHITFIELD. Gentleman's time—gentleman yields back. At this time, I recognize the gentleman from Louisiana, Mr. Scalise, for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman, and I thank the panel for their testimony.

When I gave my opening, I talked a little bit about the export facility at Cheniere, their investment alone represents about \$10 billion, again, private money being used to build this export facility so that we can create more jobs, and not only become energy independent at home, but also reduce our trade balance by exporting to other countries as well. In addition to Cheniere, there are I think 18 pending applications to build additional export facilities that are moving slowly through the process.

I want to ask you, Mr. Smith, because in your testimony you talked about the economic impact on LNG exports. If you can expand on that, you know, in general, what are your thoughts on what LNG exports and expanding this would mean to our Nation's economy first, if I could ask you that?

Mr. SMITH. Well thank you, Congressman, for the question.

So when we look at our job in terms of evaluating public interest, again, the standard that is set in the statute is that we—there is a rebuttable presumption that exports are in the public interest, and it requires us to do a public interest determination for all of the applications that we are considering. So as part of that, we consider a very wide range of factors when we are evaluating exports. We look at economic growth, we look at jobs, we look at balance of trade, we look at prices, we look at impact on American businesses and families, we look at impact on manufacturing sector, on users of natural gas, we look at environmental impacts. So there is a very wide range of standards that we use.

Part of that study or part of that evaluation we went out and requested a detailed economic study that was done in two parts, the first by our own IEA within the Department of Energy, and the second by a third party consultant. The overall result of that study which was done for the Department and entered into the public docket for public review was that at various levels, we found that LNG exports would be beneficial for the U.S. economy. The study—

Mr. SCALISE. Did you quantify jobs, economic impact?

Mr. SMITH. Yes, the study looked at jobs, it looked at economic—

Mr. SCALISE. How many jobs did it conclude?

Mr. SMITH. I don't have a number of jobs, and certainly there was—if you look at different sectors, LNG exports would have a different impact of certain sectors than other sectors. But overall net, we saw that there would be a positive economic impact for the U.S. economy, and a fairly flat impact on jobs overall.

Mr. SCALISE. So when you work in the Department of Energy and you have a study you commission that shows that LNG exports would have no real positive impact on our economy, and then you see that there are other agencies within the Federal Government that in various ways are trying to come and impede the production of natural gas in America, which of course, if you don't produce it in America then you can't export it. What do you all do, if anything, to work with these other agencies that are trying to get in the way of what States are doing very successfully to regulate hydraulic fracturing to give them—to make it clear to them that, if you are spending your time and resources that these agencies complain with sequestration and spending limitations, they complain that they don't have enough money, yet they are spending some of those vital resources to try to do things that would be counter to our own Nation's economy that would hurt these jobs that you are talking about that you tell. Do you all share this with these other agencies as they are going off on these kind of separate tangents?

Mr. SMITH. We work very closely with all the agencies here within the Federal Government, because we have one mission, one shared mission which is to ensure that we prudently develop what is a very important resource, our natural resources here in the United States, particularly natural gas, and also ensuring that we do so with a minimal impact on the environment.

The most important thing that Department of Energy is doing right now in terms of prudent development is to take concerns seriously, bring good objective science to quantify concerns that people

who live close to where these wells are being drilled have, to help demonstrate that we take the concerns seriously and that the regulations that are in place are effectively mitigating those risks which we have scientifically quantified.

Mr. SCALISE. And so you know, our States do that already so that you don't have a need to duplicate things that are already being done successfully. Our States actually do—each State regulates hydraulic fracturing and horizontal drilling and they do it very well, and so as you have these concerns—as each State has their concerns, I think somebody in Shreveport, Louisiana, where they have got the Haynesville shale plate, they feel much more comfortable that if there is any kind of concern, they can pick up the phone and call their State representative or call their State Department of Natural Resources and get those problems addressed, rather than calling some kind of—some bureaucrat that they can't identify, maybe can't even get in touch with at Washington, DC. So I would appreciate if you would share this information so other agencies know that some of the things they are doing run counter to the very things you showed in your report about jobs.

I appreciate that. Yield back the balance of my time.

Mr. WHITFIELD. Gentleman yields back. At this time, I recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Ms. Moyer, I believe this is the first public acknowledgment that the Corps is not going to do regional EIRs. Is that correct, that this is the first time that that has been publically acknowledged by the Corps?

Ms. MOYER. That we are not doing a regional or an area-wide?

Mr. MCNERNEY. Right.

Ms. MOYER. Yes. Well, I thank you for making that statement; however, it seems to me that the combined effect on traffic and noise pollution, road coal dust, and all these other things would have a regional impact. How did the Corps come to that decision that a regional or area-wide impact was not appropriate?

Ms. MOYER. By doing a very careful review of our existing regulations and pertinent case law, it is very clear that these facilities are widely separated. They are not in the same watershed. They have very different proposed impacts when you look at each individual facility. And they are not connected actions. Each facility is not dependent on another facility to go forward, and when you look at that in the context of the existing framework of regulations, those are the factors that lead you to do an area-wide, and none of those factors—

Mr. MCNERNEY. So you think that doing the specific EIRs for each individual facility will be sufficient to capture those issues and protect the local population?

Ms. MOYER. I do. I do, and each district is in the process of doing a specific NEPA evaluation. The two in Seattle District are undergoing environmental impact statements. The project in the Portland District, the Coyote Island terminal is currently doing—undergoing the process of an environmental assessment to determine if they need to do an EIS or not.

Mr. MCNERNEY. Do the governors of the two states involved agree that that is the appropriate approach?

Ms. MOYER. They are involved in the process in the normal way that we engage in those coordination attempts. Now, the State is a cooperating agency and is actually a co-lead agency on the two projects in Washington State, so that is a federal, state, and actually the counties where the projects are located in Washington State are also participating as co-lead agencies on the Washington State projects.

Mr. MCNERNEY. Thank you. Mr. Wright, would you reiterate how the FERC and the DOE jurisdictions on LNG break down?

Mr. WRIGHT. Basically, the Department of Energy is in charge of approving the importer, the export of the commodity, the natural gas, the movement itself. FERC is in charge of approving the facilities necessary to effect that movement of the import or the export of the natural gas.

Mr. MCNERNEY. And the operations of the facilities?

Mr. WRIGHT. Yes.

Mr. MCNERNEY. Is there much collaboration between the two agencies?

Mr. WRIGHT. Well we do talk, yes. I mean, we do have different procedures and we don't necessarily participate in each other's procedures, but we are aware of what is going on at each other's agencies.

Mr. MCNERNEY. Do you all feel this is a controversial issue, LNG exports?

Mr. WRIGHT. From my perspective as an environmental and safety regulator, it is controversial issue in that people—some people do not like infrastructure. They do not like the impact on the environment. Others go further and worry about the effects on the economy, but we are not charged with looking at the effects associated—economic impact.

Mr. MCNERNEY. So how much gas do you expect will escape from these LNG terminals?

Mr. WRIGHT. I don't have a number for that, sir.

Mr. MCNERNEY. That would be—I mean, I heard zero but I don't hardly believe that. I would like to see that. I mean, natural gas is a strong greenhouse gas, much stronger than carbon dioxide, although it doesn't persist in the environment as long, but in the short term do we need to worry about that? Are you in charge of regulations to determine the technical quality of the materials that go into building an LNG terminal?

Mr. WRIGHT. We do an engineering review of what is proposed and what will be constructed there and look for the most efficient and safest way to build the LNG terminal.

Mr. MCNERNEY. So what can you do, then, to prevent rogue gas from escaping from LNG terminals, or what will you do?

Mr. WRIGHT. Well not being an engineer myself, my engineers would meet with the project proponent. They would talk it over—and they do this in technical conferences—talk over what valving, what piping they are going to use, and whether it is the current state-of-the-art, if you will, and that would be the one way to protect against fugitive emissions is using the most relevant, the most current facilities and construction materials possible.

Mr. MCNERNEY. So, coming from an engineering background, thank you for indulging me, Mr. Chairman, a little bit. Field test-

ing, test data, some way of assuring rather than just saying it is the newest equipment would be in order.

I will yield back.

Mr. WHITFIELD. Gentleman's time is expired. At this time, I recognize the gentleman from Illinois, Mr. Shimkus, 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. For my friend from California, we do have LNG facilities today and they have been operating for decades, some of them, and I just find it hard to believe that we—they would create a facility that would leak gas, a commodity they want to sell, on the market.

We had talked before about—I usually bring a poster. I haven't done it this Congress—of coal miners who lost their jobs in the '92 Clean Air Act. And so sometimes I get questions or where is it? Well, this is a great debate about bringing a new poster about coal mining jobs that are available in southern Illinois because of the exporting of coal. So I have an Illinois basis supply site story—that is not the first one I wanted to use. I want to use the Ernst and Young analysis, and it says that 15 percent, which is 5.5 million short tons, were exported abroad—this is just in Illinois—and accounted for 860, 15 percent of the total 5,868 coal mining jobs in just my state alone. The total estimate direct, indirect, and reduced contribution related to exports from 2011 is 4,190 jobs, \$281 million of labor income, and \$524 million of gross value added.

So we are poised as a country to really be in a great position to turn—over my past decade of being here, it is always we are sending our money to the Middle East because they have the energy. Now we can say people are going to be buying our energy. They are going to be sending their money to us, which will help across the board in our balance of payment, our trade, on our revenues to our country providing the services, especially in a sequestration. This is just a tremendous win/win if we get it right. If we get through the regulatory hurdles and we get the export facilities, whether it is for LNG terminals or whether it is for coal, and we start exporting this stuff to folks who want to purchase it.

The other—so here is another one. This is one I held up before. Illinois Basis supply site story. Illinois Basin producers are positioning themselves to nearly double production over the next 10 years. Now for the climate change folks, that is scary. I mean, for people in southern Illinois who want jobs, that is very, very exciting. But the caution is that these expansions are market dependent.

So you know, the fight about LNG terminals or whether the fight is on coal terminals, it is a climate debate to try to destroy the market so that we don't have the market to expand our selling of the fossil fuel bounty that we have in our great land. That is what this debate is about, and everyone knows it, and so that is why we need to move forward for jobs and lower costs of energy and the like.

Illinois just moved yesterday and the governor signed the fracking bill. We think it will be exploited greatly in southern Illinois and crude oil will be flowing again like it did during World War II, and we will need, again, market. So Mr. Chairman, I would suggest that we have one more, and this is on exports of LNG and coal. I think that there may be a time, based upon the demand of

liquid transportation fuels right now, and our supply and our renewables that we might be able to export refined product across the world to those in need. The world market is going to go up about 1 percent at a minimum, so we may want to follow this up with another opportunity for jobs.

So in my last minute, let me turn to Ms. Moyer, because we are talking about kind of the hurdles that we are facing. What is the average time frame for the Corps to complete an environmental impact statement for the purpose of a marine terminal?

Ms. MOYER. I don't have the timeframe.

Mr. SHIMKUS. We don't have an average timeframe?

Ms. MOYER. I don't. I can get that information. We can get you some information on that.

Mr. SHIMKUS. When can the draft environmental impact statement for the Gateway Pacific terminal project be expected?

Ms. MOYER. They just finished scoping and at the end of this month, they are going to release the scoping report so that that will outline what issues and effects they are going to be considering in that draft document. So from there, then they will draft the EIS. So I don't have the final timeline for that, but they are moving forward with that process.

Mr. SHIMKUS. And when do you expect the draft EIS for the Millennium Bulk terminal project?

Ms. MOYER. They are initiating scoping this summer, and as I mentioned previously, they are doing a joint process with the State and the county, so it is the Corps, the State, and the county, and I think that although it makes things go a little bit more slowly than if the Corps was doing it by itself, moving together—forward together will ultimately get us all to the same—

Mr. SHIMKUS. You are hoping that a partnership will help you get to the finish line faster than a supposed fight that may occur if you are not?

Ms. MOYER. Right, right.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. WHITFIELD. Gentleman's time is expired. At this time, I recognize the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Just an aside, I am glad to hear my colleague from Illinois is going to be producing oil, because we are good friends but we do have differences coming from Texas and Illinois on ethanol. But I am hoping you are going to produce a lot more oil than you do ethanol.

But again, thank you, Mr. Chairman, for holding the hearing. I thank our witnesses. Mr. Smith, I want to thank you because I enjoyed meeting with you last week, and I hope you don't mind, I will repeat some of my questions for the record, and based on your remarks recently at the Senate energy hearing, it has been suggested the remaining applications maybe considered at a one project every month pace—every 2 months pace. Is that true?

Mr. SMITH. What we are able to say is two things. First, we are looking at these on a case-by-case basis so it is going to vary between projects, but if you look at our performance for the Freepoint application between closing of the public comment and the release of the application was just over 2 months.

Mr. GREEN. OK. You mentioned also that further information becomes available at the end of 2013, including the EIA's annual energy outlook report. The Department will assess the impact of any market developments on subsequent public interest determinations. Are you suggesting that you plan to take another pause at the end of the year? If so, aren't you concerned that it will give certain companies a competitive advantage?

Mr. SMITH. Thanks for the question, Congressman. What we are going to do is ensure that we are all using the most appropriate information that is available, so as market conditions change or as new information becomes available, we are going to be constantly reassessing these applications on a case-by-case basis.

Mr. GREEN. OK. This question is for both you and Mr. Wright. When it comes to your statutory responsibility in regards to LNG exports and imports, are there any issues or limitations within the Natural Gas Act that you would like to see changed in order to do your job more expeditiously and effectively? Either FERC—and I know it is a two—well, three-step process, that is why the Corps is here, but maybe FERC and DOE.

Mr. SMITH. Thank you for the question. I would state that our job as a member of the Executive Branch is to ensure that we are executing the law as written, both the letter and the spirit of the law, so if Congress should change the law we will certainly be executing the spirit of that law as changed.

Mr. GREEN. But you don't have any suggestions on improvements in the law?

Mr. SMITH. I would not take it upon myself to make suggestions to this body about what they should change.

Mr. GREEN. Mr. Smith—or Mr. Wright?

Mr. WRIGHT. As per the Energy Policy Act of 2005, FERC was named—explicitly named the lead agency for processing LNG cases as well as pipelines, and within that context we set the schedule and we set the schedule not only for ourselves, but for other agencies. So I would agree with Mr. Smith. We have a good deal of authority that we need. If this body believes we need more, we will welcome it.

Mr. GREEN. OK. Mr. Wright, in conducting the environmental reviews, do you find that other agencies are responding in a timely manner?

Mr. WRIGHT. In most cases, yes, agencies do. Some agencies do have statutory considerations that prevent them from adhering to our usual—our schedule that we put out. That was acknowledged in the Energy Policy Act of 2005, but in general, the agencies do a very good job.

Mr. GREEN. Mr. Smith, you mentioned that Section 3A of the Natural Gas Act creates a rebuttable presumption that a proposed export of natural gas is in the public interest. Why do you choose then to conduct a full public interest review?

Mr. SMITH. Well I mean, our interpretation of that law simply states that it is incumbent on those who would expose exports to demonstrate that approving a particular export application would not be consistent with the public interest, which means that we have to take those things into consideration. The law states that

we have to consider the public interest, and that is what we do through our processes.

Mr. GREEN. Mr. Booth and Mr. Cooper on the second panel argues that the case-by-case order of applicants that you plan to review violates the Administrative Procedures Act, because that approach was never offered up for a notice and comment period, and how do you respond to that.

Mr. SMITH. Well, you know, we have an obligation to make sure that we do consider each of these applications. We have to have some sort of sequence for doing that, so we don't have—we have not put in place anything that would state that there is a rule or something unique that applicants have to do before they will be considered, but in doing our work with the finite resources that we have, we have to have some sort of process for getting through the queue of applicants, and we wanted that to be open and transparent and fair.

Mr. GREEN. Thank you, Mr. Chairman. I know I am almost out of time, but coming from Texas, it seems like every port from literally the Sabine River to the Rio Grande is going to get in line, so hopefully we can keep that production going in south Texas, make sure we can do that. Use it and export what we can't use. Thank you.

Mr. WHITFIELD. Chair at this time recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman, and it is only appropriate that I ask questions after Mr. Green from Texas, because it was 2005 that he and I teamed up to expedite the process to import liquid natural gas, as we felt there was a shortage of natural gas to meet our then current needs. That no longer exists today, and now we are talking about, perhaps, those same facilities that were being permitted to import liquid natural gas can now turn around and be exporters ourselves of natural gas.

So I was interested—and I think it was Mr. Wright that there was a conversation regarding taking into account any price impacts on consumers. Was that you that answered that question?

Mr. WRIGHT. No, it was not.

Mr. TERRY. That was you, Mr. Smith? Sorry, Mr. Smith.

Mr. SMITH. That was me.

Mr. TERRY. And so in regard, what was your finding on any impact on prices?

Mr. SMITH. So we commissioned a study that was delivered to the Department of Energy, and that study found that in some cases that there could be some price impacts in terms of creating additional demand.

Mr. TERRY. Can you be more specific?

Mr. SMITH. Well there are lots of cases, so we looked at a number of cases, so we found in the base case it is actually very difficult for LNG to compete in global markets, and so there would be zero or no impact on prices. We ran other cases that looked at limited supply of LNG globally. We looked at other cases that looked at increased demand for LNG globally, and we looked at some cases to combine some of those. But in different scenarios, we know that LNG is, at least historically, has been a fairly volatile commodity

in terms of price, but we found that overall, the overall impact on the economy, the results of the study said would be positive.

Mr. TERRY. Is our current supply of natural gas that is readily available recoverable? Is it meeting our current needs of natural gas in the United States?

Mr. SMITH. I would say yes.

Mr. TERRY. In fact, there is an argument that we have an over-supply of liquid—I am sorry, of natural gas currently. So there is actually opportunities to increase demand, is that correct?

Mr. SMITH. I think the—right now certainly you see some surplus of natural gas in lots of basins, in fact, you see some areas in which companies are flaring natural gas, so certainly you could unambiguously state that in many parts of the country, you see some surpluses of natural gas.

Mr. TERRY. Thank you.

Mr. Wright, a question for you. Based off of the reason why we needed to streamline permitting of export—I am sorry, import facilities in the United States so we could take more natural gas, an amendment that Gene Green and I had. So currently now for exporting, what role do State and county and local agencies play in connecting with siting of any LNG facilities under Section 7 of the Nat Gas Act?

Mr. WRIGHT. Well, actually under Section 3 of the Natural Gas Act—

Mr. TERRY. Or Section 3.

Mr. WRIGHT. Yes. States are invited to participate in the process and they are—if they wish to assign an agency to comment upon it, they are to do so within 30 days of the filing of the application. So their involvement begins early on in the process.

Mr. TERRY. And counties and localities have the same ability to provide you information?

Mr. WRIGHT. Oh, certainly. Anyone has the ability to provide information to us.

Mr. TERRY. But they don't have the ability to stop a project now, other than if you take into account their comments?

Mr. WRIGHT. Well that is part of what the environmental process is, the NEPA process.

Mr. TERRY. Now what is the position of your office on whether the State has authority under the Coastal Zone Management Act to allow county officials to effectively veto a Section 7 natural gas pipeline application by withholding a local permit?

Mr. WRIGHT. Well, that has actually happened. In thinking back, it was a proposal to bring a pipeline across Long Island Sound some years ago and that was effectively vetoed by the delegated—federally delegated authority to the State.

Mr. TERRY. So that could happen again?

Mr. WRIGHT. Yes, it could.

Mr. TERRY. All right. And last—and this is to both Mr. Smith and Mr. Wright and Ms. Moyer. Have you heard of—have any lawsuits been filed against your agencies by environmental groups permitting—regarding permitting LNG export facilities? Mr. Smith?

Mr. SMITH. We would certainly expect all of the actions of the Department to be scrutinized and contested, and in fact, we have had some legal issues that we are currently litigating, so yes.

Mr. TERRY. All right.

Mr. WRIGHT. We have had rehearings filed in the Sabine Pass, the one action we did take. I do not believe we were taken to court over that, though.

Mr. TERRY. All right.

Ms. MOYER. I am not aware of any, but I can——

Mr. TERRY. Thank you.

Mr. WHITFIELD. Gentleman's time is expired. At this time, I recognize the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. CASTOR. Thank you, Mr. Chairman.

This hearing presents us with an issue that America must confront. With everything science is telling us about climate change and carbon pollution, should our country be promoting and increasing exports of coal? I tend to agree with the ranking member, Mr. Waxman, when he says there is a difference between coal exports and natural gas. For coal, coal is the single largest contributor to climate change and global warming, and the resulting impacts, looking out at the years ahead, are quite dire for our country and all across the globe. It is going to impact our national security as our military leaders have said. It is a great risk to coastal areas like my home State of Florida, health issues. So can America, on the one hand, provide any global leadership to fight climate change, and then on the other hand, promote and increase exports of coal?

Ms. Moyer, I know in your previous testimony here today you said that examination of the broader climate change impacts really are not within the framework of the Army Corps, but you did acknowledge that climate change is very serious. So shouldn't someone, some agency consider the larger impacts of expanding coal exports on climate change?

Ms. MOYER. Certainly I think that climate change is a huge issue that is facing us all. That is my personal opinion, and what was in my testimony and what I will reflect on again is that NEPA and the Corps zone regulations direct that the Corps consider whether the Corps' permit action is part of a larger action, or whether it is a limited—whether we have a limited handle on what is being proposed. And if it is part of a larger project, we have to decide what aspects outside of our jurisdiction do we have control and responsibility for and therefore, expand our scope of analysis.

And in the context of these proposed terminals, we have looked at the context and we have determined that we don't control coal mining. We don't control shipping by rail or shipping on the high seas——

Ms. CASTOR. Well a number of elected officials and community leaders, environmental groups, public health organizations have raised concerns about the potential impacts of building and operating new coal export terminals in Washington State and Oregon. The impact of the coal export terminals on water quality in the region's fisheries are one important concern. In a letter to the Army Corps, the Puget Sound Partnership, a State agency established to lead efforts to protect and restore Puget Sound, outlined several concerns with the proposed Gateway Pacific terminal near Cherry Point, Washington. The Partnership raised ocean acidification as a major concern. Ocean acidification is caused by oceans rapidly ab-

sorbing carbon dioxide from the atmosphere, and the State of Washington has launched a major initiative to address the impact, since it harms the State's shellfish populations and commercial fisheries. How will the Army Corps examine the impact of the proposed coal export terminals on ocean acidification in the Pacific Northwest?

Ms. MOYER. It is my understanding that ocean acidification is another resulting—or another result from climate change, so it leads back to—

Ms. CASTOR. But is it regional. You said some impacts are too attenuated for the Corps, but that is a regional impact or a very localized impact.

Ms. MOYER. Well ocean acidification, it is the result—what is in those letters is tied back to the local impacts from overall ocean acidification. And I am not at all discounting that there are those concerns from folks in that area.

Ms. CASTOR. All right, let me ask another specific question. The Washington State Department of Fish and Wildlife suggested the Corps evaluate potential impact of coal dust generated by the Ute Gateway terminal, which would affect water quality in nearby streams and wetlands. Others have raised broader concerns about the water quality impacts along the rail and barge routes. How will the Army Corps study the impacts of coal dust from the proposed coal export terminals?

Ms. MOYER. As I mentioned in my testimony, the Corps is going to look at those effects that are within its scope of analysis so the ones that are occurring within the facility itself and those areas in which we have—

Ms. CASTOR. What about the health of the Columbia River and other important salmon habitats?

Ms. MOYER. Those aspects of it that are within our control and responsibility certainly will be considered. Both all of the effects, direct, indirect, and cumulative will be considered, but those areas that are outside of our scope of analysis will not be considered.

Ms. CASTOR. Thank you very much.

Mr. WHITFIELD. Gentlelady yields back. At this time, I recognize the gentleman from Louisiana, Dr. Cassidy, for 5 minutes.

Mr. CASSIDY. Thank you.

Mr. Wright, the Sabine Pass liquefaction project in Cameron Parish took 441 days, and it may—I don't know if this is going to be Mr. Wright or Mr. Smith. I think, Mr. Smith, you mentioned that it was only 2 months between the closing of the application process to approval, so 60 days, so clearly there are 381 days in which the process took the time to get done. So what bottlenecks are coming up that are prolonging this process?

Mr. SMITH. So thank you for the question. So we certainly understand the sense of urgency around these regulatory processes, and we are endeavoring to move these forward as expeditiously as possible in all cases.

In the timeline that you just mentioned, after the Sabine Pass order was finished, we stated in the Sabine Pass order that we did have to consider the cumulative impact of that order and any subsequent orders when we are looking at additional authorizations. This is a very important and complex public interest determination

that has to look at domestic and global impacts, domestic markets, global markets, impacts on consumers, American businesses and families, jobs, et cetera. It is not a trivial point, and we did——

Mr. CASSIDY. So was there a bottleneck, per se, or was it just that complexity of the issue was such that it just takes that long?

Mr. SMITH. I think it was a tremendously complex and important issue, and——

Mr. CASSIDY. Now since a lot of those issues are generic, as presumably subsequent approvals will not take as long?

Mr. SMITH. I would agree. One of the reasons that we pointed out that the period between the end of the comment period and the actual issuing of the order was something, you know, just north of 2 months was to state that the public—the cumulative impact study, which was a complex study, is not something that we see that we are going to have to replicate between each one of these orders.

Mr. CASSIDY. Now just because I know this is how the game works, there may be an agency that sits on it and doesn't process it. Is there any way to one, identify agencies which perhaps were not as expeditious as they could be, and two, if there was such an agency—it doesn't have to be named—is there any way to put the Bunsen burner underneath them to get them to actually get it moving?

Mr. SMITH. Our job is very specific. It is to—and very explicit. It is to work together to move as expeditiously as possible to get a good public interest determination——

Mr. CASSIDY. That is not really answering my question.

Mr. SMITH. Well, Congressman, I think it does address the issue. I mean, we are currently——

Mr. CASSIDY. So there is never an agency that seems to be a little dilatory in terms of how quickly they respond?

Mr. SMITH. Well in this case, we have got two primary agencies that have jurisdiction. We control the authorization to export the molecule. FERC controls the authorization to build the terminal. We are working together very closely to make sure that we are getting this work done.

Mr. CASSIDY. Mr. Wright, would you add anything to what has been said?

Mr. WRIGHT. What I would say, and I said earlier this morning, a lot of our problems or difficulties in processing do stem from the applicant. We encourage or by statute they are supposed to stay in the pre-filing period for at least 6 months. Some companies are very eager to get out of the pre-filing, thinking that going to the application mode would hasten the processing. It does not. Pre-filing is a very free flowing information flow period. You go to a formal application, our ex parte rules take over. Things have to be done much more in writing and on the record. That said, I believe Cheniere would have been processed much sooner. They did not complete their air modeling analysis during the pre-filing, so substantial—they jumped right to the formal application, therefore substantial information was required after their certificate filing was made.

Mr. CASSIDY. Got you. Is there any limitation or timeframe in which individuals or organizations can file claims in court to request a rehearing of the Commission orders?

Mr. WRIGHT. Thirty days after the Commission issues its order rehearings are due.

Mr. CASSIDY. So there is a definite kind of define timeframe, cannot exceed?

Mr. WRIGHT. Yes, sir.

Mr. CASSIDY. Great. Mr. Smith, any comments? You look like you were looking off in space pensively.

Mr. SMITH. No additional comments.

Mr. CASSIDY. Got you. I yield back. Thank you.

Mr. WHITFIELD. Thank you, Dr. Cassidy. At this time, I recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman. I have a series of things I would like to get a react to on it. The Energy Policy Research Foundation has said that neither net world coal combustion nor the greenhouse gas emissions will change substantially as the result of an expansion of our coal exports. Interesting statement. That was one. The other comes from McClellan, who used to be chairman of the National Research Council, Committee on Toxicology. He was past chairman of the EPA's Clean Air Scientific Advisory Committee. He said that coal continues to play an important role of meeting the energy needs around the world, with steady improvements made in its transport and use. Coal has been transported through the Northwest by rail for decades, and there has never been any evidence of harm associated with this rail transport. Could any of you respond to those two comments?

Mr. SMITH. Well, I can give a response. We don't have oversight over coal exports, but I would certainly say two things. First, we do have significant concerns about climate change and we think there are specific things that we need to do to be reducing greenhouse gas emissions into the environment. The second is that we are——

Mr. MCKINLEY. If I could, on climate change. Could you tell me what is your end game? If we are 400 parts per million of CO₂, where do you want to stop it, at 400 or do you want it back at 250, or where are we trying to go?

Mr. SMITH. Well, I cannot give you a specific answer to that question because it is not simply something that is not under my jurisdiction, but I can say that in terms of the research and development we are doing for coal, we are making an historic investment to ensure that coal is part of the clean energy economy of the future, that we are making steps to ensure that we are able to reduce greenhouse gas emissions from coal-fired power plants, that we are creating the technologies that we can sequester it in a way that is safe and environmentally sustainable, and that we are able to take advantage of this very important domestic energy resource.

So there are technological research and development solutions to the challenges that we see of making sure that all of our energy resources remain relevant and contribute to our——

Mr. MCKINLEY. All right, so we didn't really answer either of the two questions, but go back—if we don't export coal, do we really think the other nations are going to not find coal someplace else?

Mr. SMITH. Again, Congressman—

Mr. MCKINLEY. My question—really, are we trying to take ourselves out of the market and all the jobs that are related to it, from transportation to mining it and all the support facilities? I am trying to understand, because I think the Congressman from Illinois was right. This isn't a fight about exports; this is a fight about coal. The war on coal continues here in Washington. So I am trying to really grasp where we are going, because they are going to find coal someplace else, or they are going to find natural gas, LNG, from someone else, are they not? Are they not? Are they not going to—if we don't sell it to them, will they not find it someplace else?

Mr. SMITH. Well, one can observe that there is lots and lots of coal that is being burned in China and India. There are lots of plants going up. There is lots of activity there. There are things that we are doing that are very proactive in terms of—

Mr. MCKINLEY. So we are just taking ourselves out of the market if we were to allow this to either be postponed, delayed, or terminated, isn't that right?

Mr. SMITH. I can't speak to exports. Again, Ms. Moyer could speak to exports.

Mr. MCKINLEY. Could you please add into this, because I am curious about from all the jobs that are associated with it in our industry, and coming from West Virginia, 50 percent of the export of coal comes from West Virginia, and so I take it very personally when someone says we potentially could ban the exporting of coal and/or natural gas.

Ms. MOYER. And certainly—

Mr. MCKINLEY. Could you get closer to your mike, please?

Ms. MOYER. Sure.

Mr. MCKINLEY. Thank you.

Ms. MOYER. And certainly knowing that you are from West Virginia, you are certainly most likely very familiar with the fact that the Corps of Engineers doesn't regulate the—or have the responsibility for regulating the development of coal resources.

Mr. MCKINLEY. I understand, but I am trying—but you have got the terminal and they are threatened, but yet we have testimony from people, we have got mayors from all over the Northwest who say they support this.

Ms. MOYER. And what I explained in my testimony is that the Corps of Engineers has very limited authority in these shipping facilities where you have a limited scope of analysis. We are not looking at a lot of these attenuated effects. We are sticking to the footprint of the project itself and the associated indirect effects.

Mr. MCKINLEY. I am sorry, I have run out of my time. I am sorry. Maybe we can chat more about the—

Mr. WHITFIELD. Gentleman's time is expired.

Mr. MCKINLEY. Thank you very much.

Mr. WHITFIELD. At this time, I recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. I kind of feel like we are tag teaming. McKinley just tagged me.

Let's pick it up where we left off. Virginia has—and most of them are in my district, 9,000 plus workers who deal with coal, and one of my concerns is as I was listening to some of the other questions

that you would think that some of the folks, you know, want to dictate to the rest of the world everything that happens, and I think we learned a long time ago that while the United States has huge influence, we can't dictate to other countries of the world. And so I do feel your pain, Ms. Moyer, in trying to, you know, you are trying to do your job within the parameters that you are given, but you can't make decisions because it is complex as to what happens and whether or not coal production in the United States for exports would really change the amount of coal being burned, because you would not disagree with me if I were to tell you that over the last several years, the Australians, the Indonesians, the Indians, the Russians, the Chinese, some of the southern African countries have all increased their coal production, and I would submit in part because there is some hesitancy to use American coal for fear that the American coal resources will be shut down. But you wouldn't disagree with me if I indicated that there were numerous nations around the world that have increased their coal production and their coal usage, would you?

Ms. MOYER. I don't know what they have done. I am not familiar with those.

Mr. GRIFFITH. And that is why you can't make a decision when you are trying to decide whether or not a new facility should be opened up, you can't look at all of that. You have to decide what the impact is on building that facility and do what your job is in the parameters that are given to you by the law on that facility, not looking at the worldwide impact of what might or might not happen as we move forward. Isn't that correct?

Ms. MOYER. Correct.

Mr. GRIFFITH. And Mr. Smith, I am glad to hear that you all are looking at coal and things that we can do. I have been very excited about the work at Ohio State where they have come up with a process that has worked in the small scale to do a chemical looping that has virtually no pollutant, a little bit—I think 1 percent of the carbon dioxide currently produced, but they get the energy out of the coal without having any of the NOX and SOX and mercury, and only 1 percent of what is currently produced on carbon dioxide, and I would wonder if you could tell me what you know about that project and as they move forward on the project in Alabama, how much assistance you all are going to give them in moving that project on to the fast track. Because if that works, not only can we export American coal, but we can export technology that makes it so that Mr. Waxman and I can agree that it is good to have jobs and we don't have global warming in the process. What are you doing?

Mr. SMITH. Thank you, Congressman, for that question.

So over the course of the last several years, we have made an historic \$6 billion investment in technologies to reduce the cost to capture CO₂ out of the coal-fired power plants and to demonstrate that we can successfully and sustainably store CO₂ either in saline aquifers or in depleted oil fields for enhanced oil recovery. That is a critically important goal to ensure that we are using all of our domestic resources as part of our all-of-the-above strategy.

Mr. GRIFFITH. But if I might, because obviously we all have limited time, but you know, if this technology that Ohio State Univer-

sity has developed and has been working on, if that works, that answers all those other questions. I mean, we don't have to worry as much about carbon sequestration, because there isn't going to be very much carbon output. You end up with basically a process that is all housed within, you know, the box, and of course, the bigger the box we have to see how it works. And so I would strongly encourage that the Department of Energy take a very serious look at that and see what we can do to fast track that project to see if it works, because I think it has the same potential to have us sitting here in 5 years going you know, we thought we weren't going to be able to do this, and schazaam, it happened that we are now saying about natural gas, because just a couple of years ago, they were saying we were going to have to import and now we are talking about what we can do to expedite exports. And I would note in that regard, hoping that you all are looking at the impact of jobs if we do approve LNG for export, but some people have said well that will make the prices go up. We are still waiting in Virginia for the approval to do offshore drilling. We think we have a lot of natural gas. We think we might have some oil, but we think we have got a lot of natural gas out there. If we are able to export, not only do we create jobs in the United States, but I don't think there is any impact to—any significant impact to the price because that will just spur more exploration in the United States for more natural gas. We ought to use our resources to create jobs, wouldn't you agree?

Mr. SMITH. We are enthusiastic about chemical looping and all the projects you mentioned, and we are working together on those goals.

Mr. GRIFFITH. Anything you can help us to do to get approval for offshore drilling in Virginia would be fantastic.

Thank you. I see my time is up and I yield back.

Mr. WHITFIELD. Gentleman yields back. At this time, I recognize the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

It appears DOE's consideration of public interest is somewhat limited in part due to the declarations of statute that exports of LNG to countries we have a trade agreement with are consistent with the public interest. I want to explore the concept a bit more.

Unlike metal, paper, cloth or agricultural commodities, one natural gas is exported and used, that is it. The fossil reserves of it cannot be regenerated and it cannot be reclaimed through recycling. So if we could, Mr. Smith, how does DOE account for this in its determination of public interest?

Mr. SMITH. Well, the statute creates two different and separate categories. There is a categories with which the United States has a free trade agreement. There is a separate category for those countries with which the United States does not have a free trade agreement. So by statute, we don't have discretion over exports to those countries, so following the letter in the spirit of the law, those applications are approved without delay or modification or further consideration by the Department. So when we talk about public interest determinations and all the work that we are doing, studies, evaluations, those apply to those countries with which the United States does not have a free trade agreement.

Mr. TONKO. OK, thank you. And the determination of the price that will benefit domestic manufacturing without providing a distinctive—or a disincentive, excuse me, to continue extraction is a difficult task. How does DOE consider each application for export in a national context?

Mr. SMITH. So the Department certainly doesn't set prices or determine business models, so the way that we have to look at that is look at our global dynamic equilibrium models that would help us consider what would be the impact on the domestic prices to various scenarios for export to other countries. So these are studies, they are estimates. They are based on the best available data that we have in place, and that is the methodology that we use to try to estimate what might be the impact of approving applications.

Mr. TONKO. Is the number of facilities you would approve contingent on our oversupply and the number of existing facilities?

Mr. SMITH. Well certainly as we look at each facility, we are going to have to consider the cumulative impact of facilities that we already approved. So part of that is understanding, well, what is the supply and demand balance in the United States. What do we think about the size of the resources that are available, and our ability to ensure that we can prudently and safely develop those resources. So those are all things that go into the modeling and the consideration where we are making these public interest determinations.

Mr. TONKO. Yes, and how does the public interest test apply to the reduction of domestic reserves of any essential fuel and feed stock that can not be easily replaced?

Mr. SMITH. I am sorry, I am not sure I understood the question. How does the—

Mr. TONKO. Right, how does the public interest test apply to the reduction of domestic reserves of an essential fuel and feed stock that cannot be easily replaced?

Mr. SMITH. So we do believe that we have got a vast supply of natural gas in the United States, 100 years of supply, 800 trillion cubic feet of natural gas within the Marcellus Shale alone, so we think this is a large resource that will be attractive if we can produce it in a way that is safe and environmentally sustainable. So we have to consider the size of the resource, and that is part of the public interest determination that we make for each of these applications.

Mr. TONKO. And the extraction of fossil fuels obviously has benefits, both private and public, but it also has costs, especially in the communities where this activity is occurring. If exporting LNG stimulates additional extraction and the gas is not being used as a fuel or feed stock here, how are the costs to communities where extraction takes place accounted for in your determination of public interest?

Mr. SMITH. Well thanks for that question, and certainly we have a keen understanding and awareness that the most important factor in prudent development and effective use of the resource is to ensure that the people who live and work close to where the wells are being drilled are comfortable with the processes that we have scientifically quantified the risks, and that we are demonstrating that the regulations are mitigating those risks. So that is the core

part of the research and development that we do within my office in terms of environmental sustainability and safety of domestic coal and gas production. So we consider that in our public interest determination, but we are also doing that in real time in terms of real research and development that is helping us to ensure that those resources develop safely.

Mr. TONKO. OK. Thank you very much. I yield back, Mr. Chairman.

Mr. WHITFIELD. Gentleman yields back. At this time, I recognize the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Thanks, Mr. Chairman. I appreciate that, and also I want to thank our witnesses today. I appreciate your testimony.

You know, it has been a common theme that has kind of gone through a lot of the questioning is a lot on the timeline for the applications to go through, and if I could just maybe follow up on a couple of these, if I may.

Ms. MOYER, one of the things when you are looking at these applications, how often do you have third party litigants that are going to be filing lawsuits? Do you have any idea, like in the current cases out West how many third party litigants you have?

Ms. MOYER. As far as I know, we don't have anybody that has sued us yet because we haven't taken an agency action.

Mr. LATTA. OK. if I could turn, then, to Mr. Smith. I think that—I am sorry, Mr. Wright. I believe that Mr. Barton had asked a question as to from start to finish and filing of an application how long it takes, did I understand it was 18 to 24 months? Is that correct what I heard?

Mr. WRIGHT. I was using the example of our experience with the regasification plants, the import terminals, but I tried to point out is using the Sabine Pass example of about 15 months is kind of risky in that it is each one of the export terminals are presenting kind of issues of first impressions. So I can't put my exact finger on a processing time for export terminals.

Mr. LATTA. OK. Well because I am just kind of curious, because in your testimony where you kind of lay out your timelines and what is happening, from the pre-filing process it says for a period of about at least 6 months, and then you have right in the same paragraph the question again—if I could bring this up, is on the interveners become parties to the proceedings and have the right to request a rehearing of Commission orders and seek relief of final agency actions in the U.S. Circuit Court of Appeals. When that happens, how much time is needed for that to get something out of the Court of Appeals.

Mr. WRIGHT. Well, that would be up to the actual project proponent. If you get through our rehearing process and we find that your project is approved, if someone sues you in the Court of Appeals, you can go ahead and commence construction activities at your risk. People do that on the pipeline side.

Mr. LATTA. OK, and if I could turn—Mr. Smith, if I could ask you, it is kind of interesting that in your testimony you show—state that in the one case, I think it was the Sabine, if I got that correct, it says in response to the Notice of Availability, DOE received over 188,000 initial comments and approximately 2,700

reply comments. How long did it take you all to get through that? Any idea?

Mr. SMITH. From the time that we closed that comment period to the time we issued the order, it was somewhere around 2, 2½ months was the period of time that we took to evaluate all of the comments, write the order, and get the report published and the Federal Registry notice and out to the applicant.

Mr. LATTA. OK. In that period of time, just out of curiosity then, how many folks do you have looking at the comments and then also how much time is spent looking at pretty much each of those comments, since you had, again, 188,000 initial comments and then again the 2,700 reply comments. Any idea how much you spent on each one of those?

Mr. SMITH. Thanks for the question. Some of those comments are repetitive because some of them are letter writing campaigns. Some of them are very comprehensive, so they could be entire studies or comments that are very complex, so I couldn't really give you a rule of thumb for each comment, because it depends.

Mr. LATTA. And also, just again because I said that there is a common theme here of folks on the committee looking at—on the time side. When you issued, it says here, that on May the 17th, 2013, DOE granted the second long-term application on the Freeport, and it said—in your statement, it says the order was granted after an extensive review of the application to export LNG for Freeport. How long—when you say extensive, how much time is that for that review?

Mr. SMITH. Well, there are two things that happened between Sabine Pass and Freeport. First, we commissioned an extensive study that looked at domestic and international impacts of LNG and how those would impact American businesses and families and consumers, so that took a period of time. That study, once completed, we want this to be an open and transparent and very visible process, so we put that study in the docket for public review. That was when various stakeholders had the opportunity to comment, and so that was the genesis of those comments that you just asked me about. When that was completed, we took a period of time to evaluate the comments and then we got the order written.

Mr. LATTA. Thank you very much, Mr. Chairman. My time is expired and I yield back.

Mr. WHITFIELD. Gentleman's time is expired, and that concludes the questions for this panel, except Ms. Moyer, one question I wanted to ask you. How many export facilities are under review by the Corps right now?

Ms. MOYER. In the Pacific Northwest?

Mr. WHITFIELD. Yes—no, nationwide.

Ms. MOYER. I don't know. I could get back to you on that. I don't know.

Mr. WHITFIELD. But in the Northwest, three?

Ms. MOYER. Just the three.

Mr. WHITFIELD. OK. Well we will stay in touch with you on that. I want to follow up on that.

But thank you all very much for being with us. We appreciate your expertise and testimony.

At this time, I would like to call up the second panel, and on the second panel today we have the Honorable Mike McGinn, who is the Mayor of the City of Seattle. We have Mr. Ross Eisenberg, who is the Vice President, Energy and Resources Policy for the National Association of Manufacturers. We have Mr. Harold Quinn, President and CEO of the National Mining Association. Mr. KC Golden, Policy Director for Climate Solutions. We have Mr. Bill Cooper, President of the Center for Liquefied Natural Gas, and we have Mr. Lucien Pugliaresi, President for the Energy Policy Research Foundation.

So I want to thank all of you for joining us today. We look forward to your testimony on this important subject matter, and each one of you will be given 5 minutes for an opening statement, and then I am sure that there will be some questions from members as they come back in. So thank you for joining us, and Mr. McGinn, we will call on you for your opening statement to begin with, and each one of you will be given 5 minutes. As I said earlier, there is a little box that—if it is working. Is it working? If it is working a red light will come on, but we look forward to your testimony and Mr. McGinn, you are recognized for 5 minutes.

STATEMENT OF HONORABLE MIKE MCGINN, MAYOR, CITY OF SEATTLE; HAROLD P. QUINN, PRESIDENT AND CEO, NATIONAL MINING ASSOCIATION; ROSS E. EISENBERG, VICE PRESIDENT, ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS; KC GOLDEN, POLICY DIRECTOR, CLIMATE SOLUTIONS; LUCIAN PUGLIARESI, PRESIDENT, ENERGY POLICY RESEARCH FOUNDATION, INC.; AND BILL COOPER, PRESIDENT, THE CENTER FOR LIQUEFIED NATURAL GAS

STATEMENT OF HONORABLE MIKE MCGINN

Mr. MCGINN. Thank you, Chairman. It is——

Mr. WHITFIELD. I am sorry, I should say Mayor McGinn.

Mr. MCGINN. That is—anything works. Chairman, thank you for the invitation to testify. It is a real honor to be here.

A long time ago when my hair wasn't gray and my beard was red, I worked for Congressman Jim Weaver of Oregon over there in the Longworth Office Building, and Northwest politics often involve energy. Congressman Weaver was deeply involved in champion conservation as opposed to new nuclear power plants at that time, and conservation was indeed the wiser choice. The whoops nuclear power plants that were endorsed by Congress ended up defaulting on billions of dollars of municipal bonds.

We now face another significant energy choice for the Pacific Northwest, one that could have dramatic consequences for our economic and environmental well-being: whether 110 million tons of coal a year will be transported across the Northwest and shipped to China from Northwest ports. To put that in perspective, the carbon emissions from that coal are more than the emissions projected from the Keystone XL Pipeline.

So I want to describe this just a little bit. To ship this coal to China, terminals are proposed north of Bellingham, Washington, near Longview, Washington, as well as in Oregon and British Co-

lumbia is looking at coal ports as well. To ship this coal, we would be looking at—to get to Bellingham, we would be looking at 18 coal trains a day, each a mile and a half to 2 miles long, traveling from the Powder River Basin in Montana and Wyoming, through Spokane and eastern Washington, down the length of the Columbia River, the border between Oregon and Washington, and then from south to north, almost to the northwest corner of the State in Bellingham, traversing multiple towns and traveling along the Puget Sound coastline. The coal trains are uncovered. They lose approximately 2 percent of their load on the route. The proposed coal terminal near Bellingham sits on ancestral Native American lands and is opposed by the Lummi Nation, both because it violates the burial grounds and because coal pollution in Puget Sound threatens their salmon rights, and those are treaty rights.

I tell this story because the local impacts of coal trains upon communities throughout Washington are significant. Over 40 local elected officials, including tribal leaders, have joined me in the leadership alliance against coal because of the serious negative impacts on their communities, and I would like to talk about that. Coal train traffic will clog the railroads. Coal dust and diesel exhaust from the engines pollute water and lungs. Neighborhoods along the rail lines will see decreased quality of life, and it will have significant negative transportation impacts. I ask you to consider the impacts upon communities as these coal trains go through.

In Seattle, in our industrial area we have four at-grade crossings, and then we have four at-grade crossings between our downtown and our waterfront. Each of these areas are significant job-creating areas in their own right, and in order for freight traffic to reach our port, they have to go across these rail lines. We worked with consulting firm parametrics to take a close look, and we are talking about increased gate down time up to 2 to 3 hours each day. That has economic impacts as well as public safety impacts upon our police and fire departments. Now imagine that impact on cities and towns along the entire route. These railroad lines tend to go right through the middles of towns at grade.

And then let's take a look again at just the broader impacts. We have spoken about the climate impacts already. This is equivalent to all the gasoline burned by 50 million people each year. Now unless we stop these coal terminals from being built, we will be responsible for hastening the advance of climate change here at home and around the world.

Now I have heard members of this group talk quite a bit about jobs. I just want to say, we have been working really hard in Seattle to recover from the recession caused by lax oversight of our financial institutions in this country, and we are creating jobs. We are building the greenest buildings in the world. We are retrofitting buildings, and those are local jobs. You have to be in that crawlspace. You have to be operating those energy control systems. We have been eliminating waste, putting savings—putting the money we save to productive use. That is frugal, that is efficient, and that is reducing demand for our clean wind and water power, which means we can put that electricity to better use in our economy. In fact, we should be exporting our green building technology,

not coal. In fact, we are. Our architects are building buildings in China and all over the world, because they are some of the leading architects in the world.

I want to return to the issue of the whoops nuclear power plants that I mentioned at the beginning. We somehow have this belief that economic growth requires ever-increasing amounts of energy use. We prove that to be wrong in the Northwest. We have had significant economic growth while reducing our energy use. We have grown by being more efficient and cleaner, enhancing our quality of life. That is the pathway to creating good jobs.

The same is true with coal trains. They will hurt us economically. We have better ways to create jobs. Thank you.

[The prepared statement of Mr. McGinn follows:]



City of Seattle
Office of the Mayor

**TESTIMONY OF SEATTLE MAYOR MIKE MCGINN
BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER OF THE HOUSE ENERGY AND COMMERCE
COMMITTEE
JUNE 18, 2013 HEARING
US ENERGY ABUNDANCE: REGULATORY, MARKET AND LEGAL BARRIERS TO EXPORT**

Summary

Chairman Upton, Ranking Member Waxman, Chairman Whitfield, Ranking Member Rush, and members of the Committee, thank you very much for the invitation to testify before you today. And thank you in particular for your attention to this crucial issue: coal export.

My message to you today is twofold: 1) **Coal exports will have serious negative impacts** on local communities as well as on the environment, both locally and globally; and 2) The Leadership Alliance Against Coal is **opposed to the permitting and development of any new coal export facilities** on the West Coast.

In Washington State and across the Pacific Northwest, coal companies are joining with railroads and international shipping companies to propose new export facilities for coal. Terminals are proposed north of Bellingham, Washington and near Longview, Washington as well as in Oregon and British Columbia. As they travel to Northwest ports from the Powder River Basin, coal trains will leave behind coal dust and diesel exhaust along the rail lines. Coal train traffic will clog our railroads, ports, and roads, risk our families' health, pollute our air and water, hurt local economies and contribute to climate change. In our cities, these coal trains will create unacceptably long delays for residents, visitors, freight, first responders, and others who are trying to cross the busy rail corridor. On Washington State tribal

lands, coal trains will cause those same disruptions, but will do additional damage to cultural heritage and treaty rights.

The corporations that want to export coal through our communities want us to believe that there's nothing wrong with their plans. But it is my job as Mayor of Seattle to stand up to protect our community from these coal export facilities and associated rail traffic. We need an area-wide Environmental Impact Statement to evaluate the local, regional and global impacts of coal export. The geographic scope of the EIS should be broad and all potential impacts in local communities, from increased health risks to traffic delays, from the disruption of freight movement to the impacts on our local businesses should be considered.

I stand together with the Leadership Alliance Against Coal to tell you that we do not want coal trains or coal export facilities in the Pacific Northwest.

Impact of Coal trains on Local Communities

In Washington State and across the Pacific Northwest, coal companies are joining with railroads and international shipping companies to propose new export facilities for coal. The coal industry is responding to a shrinking domestic market with plans to strip-mine coal in Montana and Wyoming, transport it on long coal trains through Northwest cities and towns, ship it on massive cargo ships off the West Coast, and sell it overseas. The largest coal company in the world, Peabody Energy, wants to build the massive Gateway Pacific Terminal north of Bellingham, Washington at Cherry Point, so they can ship coal all over the world. Another terminal is proposed near Longview, Washington along with others in Oregon and British Columbia.

As they travel to Northwest ports from the Powder River Basin, coal trains will leave behind coal dust and diesel exhaust along the rail lines. Coal train traffic will clog our railroads, ports, and roads, risk

our families' health, pollute our air and water, hurt local economies and contribute to climate change. In our cities, these coal trains will create unacceptably long delays for residents, visitors, freight, first responders, and others who are trying to cross the busy rail corridor. On Washington State tribal lands, coal trains will cause those same disruptions, but will do additional damage to cultural heritage and treaty rights.

Coal Export Will Fuel Climate Change

Unless we can stop coal terminals from being built in Washington State, at least 110 million tons of coal will be shipped from ports on the West Coast overseas to Asia every year. The proposed Gateway Pacific Terminal would export at least 59.5 million tons of coal per year, making it the largest coal export facility in North America. The proposed Longview terminal would ship at least 48.5 million tons per year.

Just the 110 million tons of coal from Cherry Point and Longview would result in more carbon emissions than the entire Keystone XL pipeline each year¹. Those 110 tons would also more than double total U.S. coal exports. A Sightline Institute study in 2011 found that burning just 60 million tons of Washington state coal in China would produce as much climate-changing carbon pollution as all the gasoline burned by 50 million people each year². Now that we're looking at 110 tons of coal every year rather than 60, this coal is the equivalent of the gas burned by everyone on the entire western seaboard plus Colorado, Montana, Idaho, Alaska, Nevada, New Mexico, Arizona and most of Texas.

Unless we can stop these coal terminals from being built and keep our coal in the ground where it belongs, Washington state coal exports will be responsible for hastening the advance of climate change here at home and around the world.

¹ <http://daily.sightline.org/2011/11/16/coal-exports-are-bigger-threat-than-tar-sands-pipeline/>

² <http://daily.sightline.org/2011/02/22/coal-exports-and-carbon-consequences/>

In addition, the Department of Interior's Office of the Inspector General recently released a report confirming U.S. coal companies receive massive subsidies from U.S. taxpayers for mining leases on public lands³. The Inspector General's findings come on the heels of the Institute for Energy Economics & Financial Analysis 2012 report which revealed that the current Bureau of Land Management (BLM) leasing program cuts U.S. taxpayers out of billions of dollars in revenue⁴. The Inspector General report faults BLM for failing to take into account potential profits for coal export and for failing to follow an Interior Secretary Order intended to ensure unbiased evaluations of the fair market value for federal coal. The report explains, "Since even a 1-cent-per-ton undervaluation in the fair market value calculation for a sale can result in millions of dollars in lost revenues, correcting the identified weaknesses could produce significant returns to the Government."

I don't think American taxpayers should be on the hook to subsidize large corporations that damage our environment and continue to advance the climate crisis.

Community Concerns

As Mayor of Seattle, I have heard concerns from many in our community about the possible impacts of the proposed coal terminal and coal trains. Last fall and winter, the Army Corps of Engineers along with the Washington State Department of Ecology and Whatcom County, held a series of hearings to take comments on the potential scope of environmental analysis for the proposed Gateway Pacific Terminal. The response they received was almost unprecedented; thousands of people turned out for each of six hearings.

³ View the full report "Coal Management Program, U.S. Department of the Interior":

http://www.eenews.net/assets/2013/06/11/document_pm_01.pdf

⁴ For additional details on the report see: <http://www.ieefa.org/study-almost-30-billion-in-revenues-lost-to-taxpayers-by-giveaway-of-federally-owned-coal-in-powder-river-basin/>

The Seattle hearing was attended by approximately 2,300 people, with the vast majority representing the anti-coal side. The regulators heard from dozens of people concerned about both the local impacts and the larger impacts on climate and then environment from the coal proposal. I testified on behalf of the City of Seattle, calling on the regulatory agencies to perform a comprehensive analysis that encompassed the full rail corridor and all of the potential health, environmental and economic impacts of the coal trains.

By the end of the comment period, the agencies received over 125,000 individual comments, with strong opposition to the proposal in general and clear call for a comprehensive analysis potential impacts. Many federal, state and local agencies weighed in to voice similar positions. For example, the US EPA recommended that not only is an analysis considering the full rail corridor as well as fugitive coal dust and diesel emissions warranted, they also urged that the regulatory agencies consider the air, water and greenhouse gas impacts from burning the exported coal (see Attachment 1).

Since the scoping hearings, local and state officials have continued to weigh in with concerns over the environmental review process. The Governors of Washington and Oregon have sent a letter urging the Council on Environmental Quality to “undertake and complete a thorough examination of the greenhouse gas and other air quality effects of continued coal leasing and export *before* the U.S. and its partners make irretrievable long-term investments in expanding this trade” (see Attachment 2) and the King County (Washington) Executive Dow Constantine has also weighed in asking for an area-wide assessment of the impacts of coal export terminals proposed in Washington and Oregon (see Attachment 3).

The Leadership Alliance Against Coal

On Earth Day, I stood together with a number of city governments and tribal nations from across the Pacific Northwest to announce a new coalition to oppose coal trains and coal exports. The

Leadership Alliance Against Coal⁵, already over 50 strong, is working together to raise awareness about the damaging economic, cultural, and health impacts of coal trains and coal exports, as well as, take action to protect our communities (see Attachment 4). We have all agreed that the proposals to export coal from the Northwest present unacceptable impacts to our communities.

In addition to the members of the Leadership Alliance, hundreds of other public officials at all levels of government have voiced concern and/or opposition to the coal export proposals. A summary of this outpouring of concern is summarized in Attachment 5.

Impacts in Seattle

Last year, the City of Seattle worked with consulting firm Parametrix to take a close look at the traffic impacts of the coal train proposal⁶.

The findings indicated that running as many as 18 coal trains per day through Seattle, each over a mile long, at an average speed of 20 miles per hour, will significantly increase delays along our waterfront and in the industrial area south of downtown.

The traffic study indicated railroad crossing gates will be down an additional one to three hours each day. Those coal trains will separate our waterfront and the maritime, industrial, and other small businesses on the waterfront side of the tracks from the rest of the City. The trains will essentially form a wall, cutting off a critical part of Seattle's economy. It will also limit the ability of people to access the businesses and attractions on Seattle's waterfront and hinder emergency response to these areas.

⁵ More information on the Alliance is available here: <https://www.facebook.com/LeadershipAllianceAgainstCoal>

⁶ For additional details on the traffic study, please see: <http://www.seattle.gov/transportation/coaltrainstudy.htm>
View the full report, "Coal Train Traffic Impact Study": <http://www.seattle.gov/transportation/docs/121105PR-CoalTrainTrafficImpactStudy.pdf>

We already know the traffic and safety impacts of this proposal. Those impacts raise a logical question: what do coal trains mean for our regional economy? What do they mean for the health of people living in our communities?

Proponents of the Gateway Pacific Terminal claim that it will be a job creator. I'm concerned that on the whole the terminal will actually have a negative impact on jobs because it will significantly impact business in Seattle and throughout the rail corridor. We're currently studying the economic impacts of coal trains here in Seattle. We are analyzing the impacts on operations and employment for the Port of Seattle and businesses along the proposed coal train route, evaluating the displacement of higher value goods being shipped by rail and making a determination on additional infrastructure improvements or policy measures that would be required to support coal train operations and/or mitigate coal train impacts.

Our work also helped convince the Puget Sound Regional Council to do a region-wide economic impact study. This study will assess the effects of the Gateway Pacific Terminal proposal on the regional transportation system, future trade throughout the regional freight and goods transportation system, current and future land use within the region, water and air quality and adverse impacts on minority and/or low income communities. It will also identify additional infrastructure improvements or policies that may be required to mitigate potential impacts.

In addition, Seattle is supporting studies on the air quality and health impacts from the coal proposals. A University of Washington researcher plans to analyze the air quality impacts of coal and diesel emissions along the rail corridor this summer. Later this year, a team led by Washington State University in collaboration with experts at the University of Washington and the Oregon Public Health Institute will launch a Health Impact Assessment to encompass coal transport routes from mines in the Powder River Basin to proposed coal export terminals in Washington and Oregon.

Sierra Club, along with a number of other environmental groups, recently filed suit against BNSF under the provisions of the Clean Water Act based on emissions of coal dust and chunks into our waterways from existing coal trains. According to BNSF testimony at hearings before the Surface Transportation Board, each rail car loses an average of 500-3,500 pounds of coal dust. Coal trains are composed of approximately 120 rail cars, resulting in an average of 60,000-420,000 pounds of coal lost per train, each trip, according to a Sierra Club press release announcing the lawsuit. We do not know the impacts of these discharges on the environment, particularly on Puget Sound, nor on the health of our communities, and this deserves further study as well.

Impacts in Other Cities

Communities up and down the train line can expect similar impacts to those being quantified in Seattle. In addition, we're hearing from a number of these other cities about the potential impacts they may experience.

Marysville

Within the City of Marysville, there are 23 at-grade railroad crossings with 6 intersections signalized and interconnected with railroad preemption. The City has three, four-lane east/west arterials connecting to Interstate 5. All three roadways have at-grade railroad crossings within 0.4 miles of I-5 and immediately to the west of the main north/south City arterial street, State Avenue. Each of the three east/west connectors to I-5 is separated by 1.6 miles. Average daily traffic (ADT) on 4th Street (SR 528) and 88th Street NE is approximately 30,000 vehicles per day with 20,000 ADT on 116th Street NE. Currently an average of 19 trains travel through Marysville per day with the long freight and coal trains at just over a mile in length. The City has in the past looked at grade separation options for the three east/west arterials with the conclusion that grade separation is not feasible due to site

constraints, extreme non-funded costs and very disruptive impacts to existing and planned City neighborhoods.

The proposed coal trains are estimated to add an additional eighteen 1.5 mile long trains per day rumbling through Marysville. Trains of this length are likely to block at least two of the three east/west arterials simultaneously and with a speed from 5 mph to 30 mph will result in roadway closures from 6-18 minutes per train with anticipated transportation delay of at least an additional 2-3 hours per day. The City and bordering jurisdictions have invested and planned for construction projects to alleviate safety and congestion issues on I-5, 4th Street (SR 528), 88th Street NE, and 116th Street NE, however the addition of the proposed coal trains would negate the effect of these projects. Additional to transportation delays are concerns of the capability for emergency response during times in which the City is cut in half by additional train traffic.

Spokane

Spokane, Washington is the largest Northern U.S. city between Minneapolis and Seattle. All of the rail lines from Montana, Wyoming and Idaho converge in Spokane. If rail traffic carrying coal increases from the current volume of 2 to 3 trains a day to the proposed 30 or more, the city will see many negative effects. Each train represents an economic and public safety risk.

Spokane has numerous at-grade crossings that are along commercial truck routes as well as emergency first responder routes, each presenting unique challenges when train volume increases. The rail lines leading out of town are already close to capacity and additional train volume is likely to cause congestion problems around at-grade crossings. This will have real consequences for commercial traffic as well as emergency response. In addition, existing above-grade railroad crossings are already highly degraded. If coal train traffic is massively increased, scarce infrastructure dollars will need to be

diverted to improve railroad crossing infrastructure in order to accommodate activity that does not benefit our city.

Each coal train also represents a threat to public health and the Spokane River. Spokane is geographically located on and named for the Spokane River. Community volunteers have found significant pollution to both the river and community. They have found coal dust and pieces of coal that have fallen from the 2 to 3 trains that currently pass through the city each day.

Impacts to Tribes

For tribes, treaty rights and cultural heritage are also at stake. Jay Julius, a councilmember for the Lummi Nation whose lands will be directly impacted by the Gateway Pacific Terminal, has stated, "it's like putting a coal terminal in Arlington National Cemetery" since the terminal will sit directly on an historic Lummi burial ground. In addition, the exponential increase in ship and train traffic across the Northwest created by coal export will directly and negatively affect tribal enterprises and treaty rights.

Tribal economies are among the major economic forces in our cities and regional economy. Tribes employ more than 27,000 people statewide, paying more than \$1.3 billion annually in employee wages and benefits. Tribes purchase more than \$2.4 billion annually in goods and services from our private companies and generate more than \$255 million annually in state and local taxes. For example, just north of Seattle, the Tulalip Tribes alone generated more than \$40 million in state and local taxes and is the second largest employer, along with Boeing.

As sovereign nations, 20 Indian tribes in Western Washington signed treaties with the United States, ceding most of the land that is now Western Washington, but reserving our rights to harvest salmon and other natural resources. For those rights to have meaning there must be salmon available for us to harvest.

In 2011, the Northwest Indian Fisheries Commission, representing the 20 tribes of Western Washington, developed a report on the status of the salmon recovery in the Puget Sound, otherwise known as the Salish Sea⁷. Today fishing rights have been rendered almost meaningless because the federal and state governments are allowing salmon habitat to be damaged and destroyed faster than it can be restored. Salmon populations have declined sharply because of the loss of spawning and rearing habitat and Tribal harvest levels have been significantly reduced. As the salmon disappear, tribal cultures, communities and economies are threatened as never before. Some tribes have lost even their most basic ceremonial and subsistence fisheries – the cornerstone of tribal life.

The threat of this new industry will be detrimental to treaty resources. Coal train derailments are a common occurrence now, with 22 in 2012 and 14 in 2013 so far. Bulk cargo ships have the worst record of oil spills in our State. We cannot afford this damage in the Salish Sea or along the wetlands and habitat between the Salish Sea and the Powder Mountains of Wyoming.

Conclusion

The corporations that want to export coal through our communities want us to believe that there's nothing wrong with their plans. But it is my job as Mayor of Seattle to stand up to protect our community from these coal export facilities and associated rail traffic.

We are the first generation that can see the effects of global warming right in front of us. We are the last generation that has the chance to take action to stop it. We don't need to ship coal to Asia where it will be burned in dirty power plants and the toxins and greenhouse gas emissions will come back to damage our health and communities here in the Northwest. We have better ways to create jobs without putting our health, our economy, and our climate at risk.

⁷ View the full report, "Treaty Rights at Risk": <http://nwifc.org/w/wp-content/uploads/downloads/2011/08/whitepaper628finalpdf.pdf>

We need an area-wide Environmental Impact Statement to evaluate the local, regional and global impacts of coal export. The geographic scope of the EIS should include all of the areas proximate to the proposed train routes, beginning at the mines, as well as the areas in the vicinity of the proposed coal terminals. It should consider all potential impacts in local communities, from increased health risks to traffic delays, from the disruption of freight movement to the impacts on our local businesses.

I stand together with the Leadership Alliance Against Coal to tell you that we do not want coal trains or coal export facilities in the Pacific Northwest.

Attachments

- Attachment 1: Scoping comments from Administrator Dennis McClaren, USEPA Region 10
- Attachment 2: Letter from Governor Jay Inslee, Washington, and Governor John Kitzhaber, Oregon
- Attachment 3: Letter from King County (Washington) Executive Dow Constantine
- Attachment 4: Leadership Alliance Against Coal Member List
- Attachment 5: Highlighted Statements of Concern/Opposition to Coal Export



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF THE
REGIONAL
ADMINISTRATOR

January 22, 2013

Mr. Randel Perry
U.S. Army Corps of Engineers, Seattle District
Care of: GPT/ BNSF Custer Spur EIS Co-lead Agencies
1100 112th Avenue Northeast, Suite 400
Bellevue, Washington 98004

Dear Mr. Perry:

The U.S. Environmental Protection Agency has reviewed the U.S. Army Corps of Engineers' September 21, 2012 Notice of Intent to prepare an Environmental Impact Statement for the proposed Gateway Pacific Terminal Bulk Dry Goods Shipping Facility and the Custer Rail Expansion Projects (the Gateway Pacific project). This EIS will be prepared with the Washington Department of Ecology and Whatcom County as Co-Lead Agencies, leading to a single, comprehensive analysis of the potential environmental impacts of the proposal. EPA's comments are provided pursuant to our authorities under the National Environmental Policy Act, Section 309 of the Clean Air Act, the Clean Water Act and our responsibilities as a Cooperating Agency.

The purpose of an EIS is both to provide decision makers with necessary information regarding potential environmental impacts before a decision is made and to inform the public debate. The Gateway Pacific project is one of several terminal projects proposed in the Pacific Northwest to provide for the export of coal being extracted from the Powder River Basin. These proposed projects are of great interest to the local communities, and we appreciate your efforts to hold several public meetings during this scoping period.

EISs for projects of this magnitude regularly evaluate a broad range of potential environmental impacts. The EIS for this project should examine the direct environmental impacts from constructing and operating the new terminal and expanding the existing rail spur line, including the impacts to on-site wetlands (over 150 acres), streams and nearshore habitat, as well as habitat important to herring and salmon.

In addition to looking at direct impacts in the immediate vicinity of the proposed terminal, CEQ regulations (Section 1502.16) instruct agencies to consider other effects that are reasonably foreseeable. Thus, in addition to considering the impacts occurring at and near the site of the terminal, we recommend that the EIS evaluate the potential impacts along the full route associated with transportation of dry bulk goods, including coal, to the new terminal. That evaluation would appropriately include the potential increases in fugitive coal dust and diesel emissions that would accompany the additional rail traffic to the proposed new terminal, and the potential related human health impacts to communities along the proposed routes. These types of impacts are exactly the kind of reasonably foreseeable potential impacts that NEPA was designed to address.

Other reasonably foreseeable impacts that we recommend be evaluated in the EIS include the potential for effects in the United States from combustion of the exported coal. The anticipated use of the terminal is shipping bulk commodities, mostly low-sulfur, low-ash coal, primarily to Asia. Because pollutants,

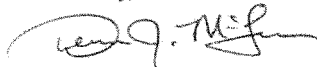
including mercury, particulate matter and ozone precursors, can travel long distances in the air, we would recommend using existing models to review the reasonably foreseeable potential for air and water quality impacts in the United States. The life cycle greenhouse gas emissions associated with the project are also appropriate to consider in this analysis. The methodologies for conducting that analysis are available and well developed; the Corps could draw on good examples of life cycle greenhouse gas emissions done in NEPA analyses by other federal agencies.

EPA also recommends that environmental impacts from increases in regional rail traffic and combustion of coal in receiving markets be examined in the context of other proposed export facilities in the Pacific Northwest region, so that reasonably foreseeable cumulative environmental impacts from additional facilities can be understood before a decision is made, as NEPA contemplates. The cumulative effects analysis would appropriately include increases in regional train traffic and related air quality effects on human health, and the potential for effects to human health and the environment from increases in the long-range transportation of air pollution, including greenhouse gas emissions.

We also note that there are several Tribes that have expressed interest in the proposed project, and we believe it will be important that the Corps engage in meaningful government-to-government consultations with Tribes. In particular, we are aware that Tribes have raised questions over potential impacts to fish habitat and cultural resources from the terminal and increased marine traffic, in addition to the decreased water quality from fugitive coal dust.

We appreciate the coordination you have carried out to date, and we look forward to working with you as a Cooperating Agency in developing the EIS. EPA has expertise and data that may be useful to you in preparing your analysis of potential impacts, and we are prepared to provide technical assistance, including more detailed information on recommended approaches for modeling and predicting impacts and suggestions for potential mitigation measures. If you have any questions, please contact me or Christine Reichgott at (206) 553-1601 or by electronic mail at reichgott.christine@epa.gov.

Sincerely,



Dennis J. McLerran
Regional Administrator



STATE OF OREGON



STATE OF WASHINGTON

March 25, 2013

The Honorable Nancy Sutley, Chair
 Council on Environmental Quality
 Executive Office of the President
 722 Jackson Place NW
 Washington, DC 20503

Dear Chairwoman Sutley:

The U.S. Army Corps of Engineers is reviewing several permit applications for coal export shipping terminals in Oregon and Washington under Section 404 of the federal Clean Water Act, and Section 10 of the federal Rivers and Harbors Act. The permit applications include the Gateway Pacific terminal north of Bellingham, Washington (Peabody Energy - up to 48 million tons per year); the Millennium Bulk Terminals proposal in Longview, Washington (Ambre Energy - up to 44 million tons per year); and the Morrow Pacific Terminal at the Port of Morrow in Boardman, Oregon with a downstream barging component to Port Westward, also in Oregon (Ambre Energy - up to 8 million tons per year). Collectively, these proposals could result in the export of up to 100 million tons of coal per year. The expected end use of this coal is for energy production in Asia. No final decisions have been made on the related applications for state permits for these facilities. Our agencies are committed to a rigorous, fair and objective process to review these applications, within the scope of our respective authorities.

As you know, while coal consumption is declining in the United States, consumption in Asia is driving a substantial increase in global coal use. Although China and India are working to increase their use of other fuels and renewables, coal consumption in Asia has more than doubled in the last ten years. According to the International Energy Agency (IEA), global coal demand will grow by 16.9 percent over the next five years, or 2.6 percent per year. To date, coal exports from the United States have not been a major source of supply for foreign markets, but that is beginning to change. U.S. coal exports already have grown from 50 million tons in 2006 to just under 100 million tons in 2012 according to the U.S. Energy Information Agency (EIA). The U.S. holds the world's largest recoverable coal reserves, according to the EIA, much of which are found on federal lands in the western U.S. The recent interest in coal export shipping terminals along the west coast, along with decreasing domestic demand, is a clear indication that the U.S. could become a significant supplier of coal to Asia.

The Honorable Nancy Sutley
 March 25, 2013
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Coal will inevitably play an important part in the global energy supply in the short term. However, before the United States and our trading partners make substantial new investments in coal generation and the infrastructure to transport coal, extending the world's reliance on this fuel for decades, we need a full public airing of the consequences of such a path. Coal is the major source of global greenhouse gas emissions, and its share is increasing rapidly. Increasing levels of greenhouse gases and other pollutants resulting from the burning of coal, including pollutants other than CO₂, are imposing direct costs on people, businesses and communities in the U.S. and around the world. These costs include the public health costs of increased atmospheric deposition of mercury in drinking water sources, as well as costs resulting from ocean acidification, rising sea levels, wildfires, and shrinking snow packs that are key sources of water for the western U.S.

As the major owner of coal reserves in the western U.S., the federal government must consider whether it has appropriately priced the coal leases that it continues to grant, including the practice of granting non-competitive leases. Senators Ron Wyden and Lisa Murkowski recently asked the U.S. Department of the Interior for information concerning alleged industry practices using in-house trading affiliates to avoid paying royalties that reflect actual export sales. These issues raise significant concerns that we are subsidizing the export of coal at the same time we are winding down domestic consumption due to serious environmental and health concerns.

We believe the federal government must examine the true costs of long-term commitments to supply coal from federal lands for energy production, whether that production occurs domestically or in Asia. We cannot seriously take the position in international and national policymaking that we are a leader in controlling greenhouse gas emissions without also examining how we will use and price the world's largest proven coal reserves.

The Council on Environmental Quality (CEQ) has issued draft guidance for agencies concerning when and how they need to consider the climate change effects of their actions. Given that the cumulative total of coal exports from Oregon and Washington could result in CO₂ emissions on the order of 240 *million* tons per year, well above the significance level described in the draft guidance – it is hard to conceive that the federal government would ignore the inevitable consequences of coal leasing and coal export. We believe the decisions to continue and expand coal leasing from federal lands and authorize the export of that coal are likely to lead to long-term investments in coal generation in Asia, with air quality and climate impacts in the United States that dwarf those of almost any other action the federal government could take in the foreseeable future.


For these reasons, we urge the CEQ in the strongest possible terms to undertake and complete a thorough examination of the greenhouse gas and other air quality effects of continued coal leasing and export *before* the U.S. and its partners make irretrievable long-term investments in expanding this trade. We understand that the draft CEQ guidance under the National Environmental Policy Act (NEPA) that is referenced above is likely to be finalized in the near future, and applaud that step and urge that the new policy be applied to coal export terminal proposals now pending as well as to all future decisions concerning coal leases. We also ask that you evaluate and determine the proper policies for pricing coal leases from federal lands, both as

The Honorable Nancy Sutley
March 25, 2013
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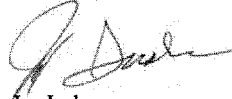
a matter of securing a fair return for this resource, and to account for the direct costs of the resulting emissions to U.S. businesses and communities. These steps are needed for the U.S. to make sound decisions as the international demand for the coal resources in the U.S. continues to grow, and to ensure that we do not simply pass these tough issues on to future generations.

Thank you in advance for your careful consideration of this matter. We would welcome the opportunity to discuss these concerns in more detail.

Sincerely,



John A. Kitzhaber, M.D.
Governor of Oregon



Jay Inslee
Governor of Washington

cc: The Honorable Ken Salazar, Secretary of the Interior
The Honorable Bob Perciasepe, Acting Administrator, Environmental Protection Agency
The Honorable John McHugh, Secretary of the Army
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army for Civil Works
The Honorable Lisa Murkowski, United States Senate
Oregon State Congressional Delegation
Washington State Congressional Delegation



King County

Dow Constantine
King County Executive
401 Fifth Avenue, Suite 800
Seattle, WA 98104-1818
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TTY Relay: 711
www.kingcounty.gov

June 12, 2013

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army, Civil Works
108 Army Pentagon
Washington, D.C. 20310-0108

Brigadier General Anthony C. Funkhouser
Commander and Division Engineer
U.S. Army Corps of Engineers
Northwestern Division
P.O. Box 2870
Portland, OR 97208-2870

Colonel John W. Eisenhower
Commander and District Engineer
Portland District
U.S. Army Corps of Engineers
P.O. Box 2946
Portland, OR 97208-2946

Colonel Bruce A. Estok
Commander
Seattle District
U.S. Army Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

Dear Assistant Secretary Darcy, Brigadier General Funkhouser, Colonel Eisenhower, and Colonel Estok:

I continue to closely follow proposals for coal export to Asia through ports in Washington and Oregon. As of this June, the three remaining proposals include the Gateway Pacific terminal north of Bellingham, the Millennium Bulk Terminals proposal in Longview, and the Morrow Pacific Terminal in Boardman, Oregon. Collectively, these proposals are estimated to result in hauling and export of 100 million metric tons of coal per year.

The scope and magnitude of these proposals is unprecedented for our region. The greenhouse gas emissions from burning 100 million metric tons of coal are twice that produced in all of Washington State. Up to eighteen mile-and-a-half coal trains traversing King County per day would cause significant delays at each rail crossing, affecting traffic, transit, and commerce.

King County has concerns about the potentially significant impacts of these proposals on health, environment, traffic, and economic development. These issues require a thoughtful and comprehensive approach. We expect that individual Environmental Impact Statements (EIS)



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The Honorable Jo-Ellen Darcy
 Brigadier General Anthony C. Funkhouser
 Colonel John W. Eisenhauer
 Colonel Bruce A. Estok
 June 12, 2013
 Page 2

will be required for all three of the proposed terminals to thoroughly analyze these impacts and identify the scope and cost of actions necessary to mitigate likely impacts.

At the same time, the impacts of these projects on the environment (including climate change, water quality, air quality, and fish habitat), health, traffic, and economic development are complex, geographically wide-ranging, and interconnected across our northwest region. Consistent with my earlier comments on the Gateway Pacific Terminal, I strongly encourage the United States Army Corps of Engineers to conduct a comprehensive, area-wide and cumulative Environmental Impacts Statement for the three remaining coal terminal proposals.

An area-wide analysis would allow for more thorough and efficient analysis of similar impacts from the terminals and associated rail and barge transport of coal and provide a fuller picture of cumulative and related impacts on traffic, economic development, health, the environment, and treaty fishing rights. An area-wide analysis would also support public engagement in identifying the impacts of a proposed terminal that may be hundreds of miles away but will trigger very real impacts in local communities along the rail line. Only through a programmatic EIS can the cumulative impacts of these related proposals thoroughly be analyzed and understood. As a nation we should also be examining for the full range of economic and environmental costs of the current coal leasing system on the health and environment on our local communities and our collective efforts to reduce climate pollution.

We are at the precipice of decisions that will determine whether we will continue to expand our reliance on extraction and export of a polluting, finite resource, or invest in a clean energy future that attracts innovation, long-term investment, and creation of sustainable job opportunities. An area-wide impact analysis will give the public and decision-makers essential information to fully consider the interrelated and cumulative impacts of the proposed coal terminals across the Northwest region.

Sincerely,



Dow Constantine
 King County Executive

cc: The Honorable Sally Jewell, United States Secretary of the Interior
 Nancy Sutley, White House Council on Environmental Quality
 The Honorable Patty Murray, United States Senate
 The Honorable Maria Cantwell, United States Senate
 The Honorable Suzan DelBene, U.S. House of Representatives

The Honorable Jo-Ellen Darcy
 Brigadier General Anthony C. Funkhouser
 Colonel John W. Eisenhauer
 Colonel Bruce A. Estok
 June 12, 2013
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The Honorable Rick Larsen, U.S. House of Representatives
 The Honorable Jaime Herrera Beutler, U.S. House of Representatives
 The Honorable Doc Hastings, U.S. House of Representatives
 The Honorable Cathy McMorris Rodgers, U.S. House of Representatives
 The Honorable Derek Kilmer, U.S. House of Representatives
 The Honorable Jim McDermott, U.S. House of Representatives
 The Honorable Dave Reichert, U.S. House of Representatives
 The Honorable Adam Smith, U.S. House of Representatives
 The Honorable Denny Heck, U.S. House of Representatives
 The Honorable Jay Inslee, Governor, State of Washington
 The Honorable John Kitzhaber, Governor, State of Oregon
 The Honorable Peter Goldmark, Washington State Commissioner of Public
 Lands
 The Honorable Pat McCarthy, Pierce County Executive
 The Honorable John Lovick, Snohomish County Executive
 The Honorable Jack Loews, Whatcom County Executive
 The Honorable Timothy Ballew II, Chairman, Lummi Nation
 The Honorable Virginia Cross, Chair, Muckleshoot Indian Tribe
 The Honorable Leonard Forsman, Chairman, Suquamish Tribe
 The Honorable Brian Cladoosby, Chairman, Swinomish Tribe
 The Honorable Melvin Sheldon, Jr., Chairman, Tulalip Tribes
 The Honorable Pete Lewis, Mayor, City of Auburn
 The Honorable Suzette Cooke, Mayor, City of Kent
 The Honorable Denis Law, Mayor, City of Renton
 The Honorable Mike McGinn, Mayor, City of Seattle
 The Honorable Keith McGlashan, Mayor, City of Shoreline
 The Honorable Jim Haggerton, City of Tukwila
 Maia Bellon, Director, Washington State Department of Ecology (DOE)
 Josh Baldi, Northwest Regional Director, DOE
 Dennis McLerran, Regional Administrator, U.S. Environmental Protection
 Agency
 Tay Yoshitani, Chief Executive Officer, Port of Seattle
 Joni Earl, Chief Executive Officer, Sound Transit
 Bob Drewel, Executive Director, Puget Sound Regional Council
 Craig T. Kenworthy, Executive Director, Puget Sound Clean Air Agency
 Christie True, Director, King County Department of Natural Resources and
 Parks
 Ngozi Oleru, Director of Environmental Health, Seattle-King County
 Department of Public Health
 Harold Taniguchi, Director, King County Department of Transportation

The Honorable Jo-Ellen Darcy
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Colonel John W. Eisenhower
Colonel Bruce A. Estok
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Carrie S. Cihak, Chief Advisor, Policy and Strategic Initiatives, King County
Executive's Office (KCEO)
Megan Smith, Environmental Policy Advisor, KCEO



Councilmember Sally Bagshaw, Seattle
 Mayor Steve Bonkowski, Bainbridge Island
 Councilmember Tim Burgess, Seattle
 Mayor Stephen H. Buxbaum, Olympia
 State Representative Reuven Carlyle, WA
 State Senator Maralyn Chase, WA
 Chairman Brian Cladoosby, Swinomish
 Councilmember Richard Conlin, Seattle
 Councilmember Rick DeGloria, Burlington
 Councilmember Nancy M. Dumas, Sumner
 Mayor Dave Earling, Edmonds
 Deputy Mayor Chris Eggen, Shoreline
 State Representative Jessyn Farrell, WA
 State Representative Joe Fitzgibbon, WA
 Councilmember Kathleen Fitzpatrick, Mosier
 Council President Seth Fleetwood, Bellingham
 Councilmember Jean Godden, Seattle
 Councilmember Mike Grady, Mercer Island
 Councilmember Jennifer Gregerson, Mukilteo
 Councilmember Will Hall, Shoreline
 Councilmember Kristen Hytopoulos, Bainbridge Island
 Councilmember Jay Julius, Lummi Nation
 State Representative Ruth Kagi, WA
 State Senator Jeanne Kohl-Welles, WA
 Councilmember Cathy Lehman, Bellingham

Councilmember Nick Licata, Seattle
 Councilmember Michael Lilliquist, Bellingham
 State Representative Kristine Lytton, WA
 Councilmember Kate McBride, Hood River
 Councilmember Doris McConnell, Shoreline
 Mayor Mike McGinn, Seattle
 Mayor Keith McGlashan, Shoreline
 Councilmember Ryan Mello, Tacoma
 State Senator Ed Murray, WA
 Mayor Jon Nehring, Marysville
 Councilmember Mike O'Brien, Seattle
 Chairman Rudy Peone, Spokane Tribe
 State Representative Jamie Pedersen, WA
 Councilmember Strom Peterson, Edmonds
 Councilmember Larry Phillips, King County
 Councilmember Laurent Picard, Hood River
 Councilmember Chris Roberts, Shoreline
 Councilmember Jesse Salomon, Shoreline
 Chairman Melvin Sheldon, Jr., Tulalip Tribes
 Councilmember Stan Snapp, Bellingham
 Councilmember Daniel Spatz, The Dalles
 Council President Ben Stuckart, Spokane
 Councilmember Moli S. Thomas, Stevenson
 Councilmember Ryan Walters, Anacortes
 Councilmember Shari Winstead, Shoreline
 Councilmember Lloyd Zimmerman, Ferndale

Highlighted Statements of Concerns/Opposition to Coal Export

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Public Officials and Agencies

U.S. Senators Patty Murray & Maria Cantwell (WA)

U.S. Senator Jon Tester (MT)

U.S. Representative Jim McDermott (WA)

U.S. Representative Earl Blumenauer (OR)

Oregon Governor John Kitzhaber

EPA Region 10

National Marine Fisheries Service

WA Dept. of Ecology

WA Dept. of Health

WA Utilities and Transportation Commission

King County Executive Dow Constantine

Pierce County Executive Pat McCarthy

Skagit County Board of Commissioners

King County Council member Larry Phillips

San Juan Island National Historical Park (NPS)

Lynn Burditt the Area Manager of the USFS, Columbia River Gorge National Scenic Area

WA State Representatives: Carlyle, Dunshee, Farrell, Fitzgibbon, Hudgins, Jenkins, Kagi, Lytton, Maxwell,

Moeller, Morris, Pederson, Pollett, Reykdal, Ryu, Takko, Tarleton, Tharinger

WA State Senators: Billig, Chase, Conway, Darneille, Fraser, Frockt, Harper, Keiser, Kline, Murray, Nelson,

Ranker, Regala, Shin, Swecker

U.S. Senators Ron Wyden & Jeff Merkley (OR)

U.S. Representative Suzan DelBene (WA)

U. S. Representative Adam Smith (WA)

U.S. Representative Peter DeFazio (OR)

Washington Governor Jay Inslee

U.S. Department of Housing and Urban Dev.

National Park Service, Pacific West Region

WA Dept. of Fish and Wildlife

WA Dept. of Agriculture

Puget Sound Clean Air Agency

Multnomah County Chair Jeff Cogen

Clark County Commissioners

San Juan County Council

Thurston County: Romero, Wolfe, Valenzuela

City Resolutions Passed

Bainbridge Island, WA

Edmonds, WA

North Bonneville, WA

Spokane, WA

Vancouver, WA

Hood River, OR

Portland, OR

The Dalles, OR

Bellingham, WA

Longview, WA

Puyallup, WA

Stevenson, WA

Washougal, WA

Milawaukie, OR

Salem, OR

Missoula, MT

Camas, WA

Marysville, WA

Seattle, WA

Thurston County, WA

Eugene, OR

OR Metro Regional Council

Scappoose, OR

City Statements, additional statements

Washington

Anacortes: Ryan Walters City Councilmember

Bellevue: Steven R. Sarkozy, City Manager

Blaine

Cheney: Mayor Tom Trulove

Edmonds: Mayor Dave Earling

Everett, WA

Friday Harbor: Mayor Carrie Lacher, City Council

Lacey: Mayor Clarkson, Council member Pratt, Lawson

Mercer Island: Councilmember Mike Grady

Mount Vernon: City Council Members

Bainbridge Island: Mayor Bonkowski

Bellingham: Mayor Linville, Council members

Burlington: Mayor Brunz

Dallesport: Community Council

Elma: Mayor David Osgood

Ferndale: Councilmember Lloyd Zimmerman

Kent: Mayor Suzette Cooke, Council

Marysville: Mayor Jon Nehring

Monroe: Mayor Zimmerman

Mukilteo: Mayor Marine, City Council President

Highlighted Statements of Concerns/Opposition to Coal Export

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Olympia: Mayor Buxbaum, Councilmember Hawkins	Seattle: Mayor McGinn and City Council members
Sedro-Woolley: City Attorney Eron Berg	Shoreline: Mayor McGlashan, City Council members
Snohomish: Mayor Guzak, Councilmember Hamilton	Stanwood: Mayor White
Sumner: Mayor Enslow, Councilmember Dumas	Tacoma: Councilmember Ryan Mello
Tumwater: Councilor Joan Cathey	La Connor: Mayor Ramon Hayes
Washougal: Mayor Guard	Woodway: Mayor Carla Nichols
Oregon	
Eugene: Mayor Piercy, Councilor Alan Zelenka	Metro Councilor Rex Burhholder
Milwaukie: Mayor Jeffrey Ferguson	Mosier, OR: Mayor Rogers and City Council
Portland: Councilmember Amanda Fritz	Roseburg: Councilmember Tuchscherer
Montana	
Helena: City Council	Livingston: Steve Caldwell, City Comm. Chair

Economic Entities

Port of Edmonds	Port of Skagit
Port of Skamania County	Vancouver Downtown Association (Vancouver, WA)
Burlington Chamber of Commerce	Edmonds Chamber of Commerce
Snohomish County Tomorrow	Washington Transportation Commission
Stanwood (WA) Area Merchants Association	Leslie Smith, E.D., The Alliance for Pioneer Square
Kyle Griffith, owner and operator, Seattle Great Wheel	
Gibson Traffic Consultants have analyzed traffic impacts in the cities of Burlington, Marysville, Mt. Vernon, Seattle and Edmonds	
Portland General Electric, opposed coal lease over concerns of coal dust on their operations in St. Helens, OR	
Columbia Gorge Windsurfing Association	

Health Entities

San Juan Island Board of Health
Skagit Regional Health, Skagit Valley Hospital
Spokane Regional Health District Board of Health
Spokane Regional Clean Air Agency
Bozeman City-County Health Board
Gallatin City-County Board of Health (MT)
Washington Academy of Family Physicians, King County Academy of Family Physicians
Washington Association of Naturopathic Physicians
Bob Elliott, Executive Director of the Southwest Clean Air Agency
Whatcom Docs – 160 physicians in Whatcom County + more than 400 health care professionals in Oregon
Robert Blake, M.D., Chief of Staff, Bozeman Deaconess Hospital
Arthur Winer, PhD, Professor Emeritus, Environmental Health Sciences Dept., UCLA School of Public Health

**Highlighted Statements of Concerns/Opposition to Coal Export
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Northwest Tribes and tribal organizations

National Council of American Indians (566 Tribes)	The Lummi Nation
Affiliated Tribes of Northwest Indians (57 Tribes)	Nez Perce Tribe
Swinomish Indian Tribe	The Tulalip Tribes
Confederated Tribes and Bands of the Yakama Nation	Confederated Tribes of Umatilla
Columbia River Inter-Tribal Fish Commission	EPA Region 10 Tribal Operations Committee

Religious Leaders

Bishop Greg Rickel, Episcopal Diocese of Olympia (Western Washington)
Bishop Jim Waggoner, Episcopal Diocese of Spokane (Eastern Washington)
Bishop Chris Boerger, Evangelical Lutheran Church in America, Northwest Washington Synod
Rev. Mike Denton, Conference Minister, United Church of Christ Pacific Northwest Conference
Rev. Dr. Marcia Patton, Executive Minister, Evergreen Association of American Baptist Churches
Bishop Martin D. Wells, Evangelical Lutheran Church in America (E. WA/Idaho Synod)

Community Leaders Statements

Robert F. Kennedy Jr	Bellingham, WA – former Mayor Pike (2011)
San Juan Marine Resources Committee	Northwest Straits Commission
Whatcom County Marine Resources Committee	Puget Sound Partnership
Washington State Democrats	Columbia County Democratic Central Committee (OR)
Will Reichardt, Skagit County Sherriff	Seattle Parks Board
Cheney Public Schools	
Ferndale School District	Mount Vernon School District
Bob Apple, former Spokane City Council member	Fmr. Seattle Port Commissioner Gael Tarleton
Univ. of Washington Student Body Resolution	Associated Students of Western WA Univ.
John Nelson, fmr City Planning Comm'r, The Dalles	Portland, OR – former Mayor Sam Adams
Cliff Mass, PhD, Professor, Department of Atmospheric Sciences, University of Washington	

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Eugene Register Guard, "Coos Bay Coal Derailed," April 2013
Everett Herald, "Tribal concerns over coal," January 2013
Everett Herald, "Why coal royalties matter," January 2013
Everett Herald, "A stronger voice on coal," December 2012
Everett Herald, "The need for a longer lens," November 2012
Cheney Free Press, "Coal trains public hearing will provide answers," November 2012
Everett Herald, "Preparing for Cherry Point," November 2012

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Marysville Globe, "New complaints about coal trains," August 2012
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The Oregonian, "Oregon and northwest neighbors must decide wisely on coal export proposals," April 2012
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Lance Dickie, *Seattle Times*, "Huge coal-export terminal needs rigorous environmental, health and traffic reviews," March 2012
Bend Bulletin, "Coos Bay port's demands defy records laws," April 2012
Heather Acheson, *Camas-Washougal Post Record*, "Potential local impacts of coal trains need to be taken seriously," March 2012
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"Local and global impacts of coal," Steve Thompson, Flathead Climate Alliance, *Whitefish Pilot*, March 2013
"Let's have healthy conversations about coal," Dr. Paul Smith (Missoula), Dr. Robert Shepard (Helena) and Dr. Robert Merchan (Billings), *Billings Gazette*, March 2013
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"Coal's no way to make the job market hop," Daniel Kammen, Professor of Energy at UC Berkeley and Michael Riordan, author, *Crosscut*, January 2013
"Climate change poses a public-health threat," Dr. Howard Frumkin, Dean, UW School of Public Health, *Seattle Times*, January 2013

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- "Called by faith to protest Whatcom County coal transport," Mike Denton, United Church of Christ Conference Minister, and Kent French, Bellingham UCC pastor, *Bellingham Herald*, November 2012
- "Study seismic effects on bluffs," Dean Smith, Everett citizen, *Everett Herald*, November 2012
- "Negatives of Mid-Valley coal trains outweigh positives," Eric Spivak, Eric Spivak Consulting, *Statesman Journal*, October 2012
- "Local impacts of coal exports unacceptable," Alan Zelenka, Eugene City Council and Kitty Piercy, Eugene Mayor, *Eugene Register-Guard*, October 2012
- "Coal export makes no sense for Oregon," Tom Kelly, Neil Kelly Inc. with Gregg Semler, Lucid Energy Technologies and Chris Taylor, Element Power US, *Portland Business Journal* and *Sustainable Business Oregon*, October, 2012
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- "Rails can't handle extra," Diane Dick, *The Daily News* (Longview), July 2012
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- "Gregoire needs to weigh in on proposed coal-terminal," Stephan Michaels, *Seattle Times*, April 2012
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- "Are coal-carrying trains a sign of progress?" Kurt Waldenberg is owner of North Sound Energy & Remodel, of Bellingham. Mike Smith is a Realtor/broker with John L. Scott in Longview, *The Puget Sound Business Journal*, December 2011
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Mr. WHITFIELD. Thank you, Mayor Quinn—I mean, McGinn.

At this time, I would like to call on Mr. Quinn for a 5-minute opening statement.

STATEMENT OF HAROLD P. QUINN

Mr. QUINN. Thank you, Mr. Chairman and members of the subcommittee. I appreciate you having this hearing today. My remarks focus on the economic contributions of U.S. coal exports as well as potential for contributing more through the expansion of that capacity.

As you, Mr. Chairman, know, many members of this subcommittee are aware, coal has been the fastest growing energy source globally over the past decade, and some forecasts actually peg coal surpasses oil as the leading energy source globally within the next 2 years. As it so happens, the United States happens to have the most of what the rest of the world needs and demands, 260 billion tons of recoverable coal reserves. To put that in perspective, U.S. coal reserves equal the proven oil reserves of the entire Middle East, Russia, and the continent of Africa combined.

So when it comes to energy independence, U.S. coal stands in the forefront by providing our Nation the resource to build and power our economy while also supplying this energy resource to countries around the globe. In fact, U.S. coal exports represent the only positive addition to the U.S. trade balance from the energy sector. Now last year we shipped about 125 millions of steam and metallurgical coal, double the amount we shipped 4 years ago. We shipped this coal to 76 countries around the globe through ports located in States on the East Coast, the Gulf, West Coast, and Great Lakes.

The economic contributions from coal export activity are documented in a report prepared by Ernest and Young released last month by the National Mining Association. Here are a few of the highlights: \$16.6 billion was added to the GDP; coal exports supported more than 168,000 jobs and a wide range of businesses, from coal mines, railroads, barges, trucks, cargo handling, and ports. For every million tons of coal exported, more than 1,300 jobs are added to the U.S. economy. These direct jobs created by coal exports pay on average \$96,000 annually in wages and benefits, nearly 50 percent more than the national average.

The trend of growing seaborne coal market is unmistakable. The developing world is demanding more coal to power historic transformation from agrarian societies to commercial powers. This transformation, unprecedented in terms of scope and pace, is built upon a coal-centric infrastructure of steel, cement, and of course, electricity. But coal is also supplying the energy and infrastructure needs of a developed world as the cost and reliability of energy supplies becomes an increasing concern in sustaining our economic futures. With a top of class reserve base, workforce, and transportation infrastructure, the U.S. is well-positioned to participate more fully in the growing seaborne coal trade.

Now whether we are able to participate to our full potential will turn on the building of our port capacity, in terms of volume as well as location. Proposals to build coal export facilities in the Pacific Northwest are critical to connecting our western mines to the growing Asian markets. The Interior Basin coal fields have been

extraordinary growth in export demand and the proposals to expand existing capacity in the Gulf will make that region even more competitive.

Now like any major infrastructure project, major risks are posed by timing and capital costs. This is why an efficient, timely, and reliable process for reviewing permit applications are critical to ensuring that these long-term investments become a reality and bring enormous economic benefits locally and nationally.

Make no mistake, if we do not seize this opportunity, other coal exporting nations will, along with the benefits of economic growth and jobs. Major exporting nations like Canada and Australia fully understand the fierce competition exists for these markets and that an efficient and timely regulatory process provides a competitive advantage. Last year, Canada's Prime Minister Steven Harper announced the "One Project, One Review" initiative to streamline the process for permitting major infrastructure projects. Here are some of the features: deadlines for determining the type and scope of environmental assessments; binding deadlines for completing reviews and issuing decisions on permits; enhanced coordination, consolidation, and responsibilities for provincial and federal agencies reviewing these projects, eliminating duplication between the provincial and federal environmental assessments. These best practices for coordination, clarity, and responsibilities and accountability with goals and timeframes are not unlike the directives in the President's Executive Order 13604 on improving performance of federal permitting on infrastructure projects. They are also reflected in recommendations to the President's Council on Jobs and Competitiveness. Applying these practices to reviewing coal export projects will unleash our full potential for providing more Americans opportunities for high wage and highly skilled jobs right here in the United States.

Thank you, Mr. Chairman. Thank you, members.
[The prepared statement of Mr. Quinn follows:]



Testimony of
Hal Quinn
President and CEO
National Mining Association
before the
United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power

*"The "U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to
Export"*

June 18, 2013

Good morning. I am Hal Quinn, president and chief executive officer of the National Mining Association (NMA). NMA is the national trade association representing the producers of most of the nation's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment and supplies; and engineering and consulting firms, financial institutions and other firms serving the mining industry.

I want to thank the chairman and the members of the subcommittee for holding this hearing on the importance of U.S. energy exports. U.S. coal exports drove economic growth both here at home and globally, adding \$16.6 billion to the U.S. economy. In fact, coal represents the only net positive addition to our nation's trade balance from the energy sector.

THE FACTS ABOUT U.S. COAL EXPORTS

In a report released recently by NMA, "*U.S. Coal Exports: National and State Economic Contributions*," Ernst & Young documented the valuable contributions that our economy derives from U.S. coal exports (*available at <http://www.uscoalexports.org/>*). Last year, the U.S. coal industry exported a record volume of more than 125 million tons of coal, supporting 168,430 jobs at mines, railroads, ports and many other businesses that comprise the wide range of industries in the supply chain. For every million tons of U.S. coal exported an estimated 1,320 total jobs are added to the U.S. economy. These high-wage jobs pay nearly 50 percent more than the national average in wages. The direct jobs created from coal exports average approximately \$96,100 annually in total wages and benefits, a rare example of new high-wage job creation in an economy still struggling to create good employment opportunities.

The share of U.S. coal that is exported abroad has been increasing in recent years. From 2000 to 2010, U.S. coal mines exported about 5 percent of total production on average but more recently the share of coal exported has doubled to average 10 percent of production. To put that into perspective, in 2012 the United States produced more than 1 billion tons of coal, of which 125.7 million tons (12 percent of total production) was exported. This marks an increase in both the volume and the share of total U.S. production that is exported compared with five years ago in 2007, when exports totaled 55 million short tons of coal (5 percent of total production). In 2011, U.S. coal exports accounted for 8.4 percent of world seaborne coal shipments, up from 5.7 percent in 2007. Of the 125.7 million

tons of U.S. coal exports in 2012, 56 percent was metallurgical coal for steel production and 44 percent was steam coal for electricity generation. The U.S. ranks second in the world in metallurgical coal exports.

COAL EXPORTS PROVIDE SIGNIFICANT ECONOMIC BENEFITS BEYOND THE U.S. COALFIELDS

The economic benefits of U.S. coal exports extend well beyond the coal fields. Coal exports create jobs throughout the supply chain that include rail, barge, port operations, cargo handling and goods and service suppliers to each of these links in the supply chain. Coal exports comprised 16 percent of the total vessel weight of exported goods passing through U.S. ports. Coal export facilities located in Virginia, Louisiana, Maryland and Alabama alone generated \$5.5 billion of economic activity and supported more than 45,000 jobs. The economic lift provided by coal exports in these states underscores the potential for other states, especially on the West Coast, to benefit economically from sharply rising coal demand from Asia.

COAL EXPORTS DRIVE GLOBAL ECONOMIC GROWTH AND PROVIDE ENERGY ACCESS TO HUNDREDS OF MILLIONS IN THE DEVELOPING WORLD

Coal is powering the historic transformation of developing countries from agrarian societies to commercial powers. The ongoing build out of humanity is occurring for the most part in the developing world through industrialization and urbanization that is unprecedented in both scope and pace. Much of this transformation depends upon a coal-centric infrastructure that requires coal for steel, cement and, of course, electricity.

Access to electricity is correlated with every measurable indicator of human development. Between 1990 and 2010, electricity access extended to 1.7 billion people. With coal being the fastest growing energy source over the past decade, it is probably responsible for lifting half of them from energy poverty. However, 3.6 billion people still remain without any or only partial access to electricity. As the International Energy Agency's Coal Industry Advisory Board recently noted:

At present 19% of the world's population, 1.3 billion people, lack access to electricity and on New Policy Scenario projections there will still be 1 billion people without such

access in 2030. To meet the UN Millennium Development Goal of eradicating extreme poverty by 2015, 395 million more people need access to electricity.

Over the next four years, more than 300 gigawatts (GW) of coal-based electricity generation is expected to be constructed globally in order to drive economic growth and raise the standard of living for hundreds of millions of people. Steel consumption will increase as these emerging economies accommodate the migration of their populations from rural areas to urban centers. This rising and growing middle class with greater purchasing power will in turn provide new markets for goods and services made here in America.

GROWING GLOBAL DEMAND PRESENTS THE U.S. WITH VAST COAL EXPORT OPPORTUNITIES

The global economy is growing with coal. The Energy Information Agency forecasts coal will remain the dominate fuel source for electricity generation through 2035 – both in the U.S. and the rest of the world. Some forecasts peg coal to surpass oil as the leading global energy source within two years.

China, the world's second largest economy, is building and lighting up scores of giant new cities with coal. Coal now generates 65 percent of India's electricity. The country's fast-rising middle class is driving plans to double the size of its power grid by 2025. China and India are not the only chapters in this story. Vietnam plans to add more than 30 GW of coal-based power this decade. Thailand, Taiwan, Indonesia, Malaysia and the Philippines are following a similar path.

The increasing appetite for coal is not confined to the developing world. Japan is expected to increase its coal imports by to replace part of its nuclear capacity. South Korea has increased its coal imports by 45 percent over the past five years. Europe is turning to more coal in response to natural gas prices that are three times those in the U.S. and because rising concerns about the future of nuclear power on the continent.

The trend of a growing seaborne coal market is clear. And the U.S. has the most of what the rest of the world needs: a recoverable reserve base of

262 billion tons and a demonstrated reserve base of 484 billion tons. The U.S. coal industry has unmistakably demonstrated its capacity to meet this growing demand—doubling its exports in four years.

In announcing the National Export Initiative, the president declared that:

We need to export more of our goods. Because the more products we make and sell to other countries, the more jobs we support right here in America. We will double our exports over the next five years, an increase that will support two million jobs in America... We have to seek new markets aggressively, just as our competitors are. If America sits on the sidelines while other nations sign trade deals, we will lose the chance to create jobs on our shores.

The planned U.S. port expansions on the Atlantic and Pacific coasts, the Gulf of Mexico and the Great Lakes would support a more than doubling of coal exports once again. That would mean the creation of at least another 168,000 high wage jobs here in the United States. But the countries looking for more coal to build and power their economies will not wait for us. There are other suppliers they can turn to if we do not expand our export infrastructure in a timely manner.

Two leading coal export countries—Australia and Canada—have demonstrated that permitting major projects can be both timely and thorough. Yet, they both continue to strive to improve the efficiency and timeliness in reviewing and permitting major infrastructure projects including coal export facilities. They understand that we are in a global competition for investment and that an effective and efficient permitting process provides a competitive advantage.

Just last year, Canada's Prime Minister Stephen Harper announced a new initiative—'one project, one review'—to provide greater certainty, reliability and efficiency in the permitting process. The key features of this initiative include:

- Deadlines early in the process for determining the type and scope of environmental assessments;
- Specific timelines for completing those environmental assessments;
- Legally binding deadlines for key regulatory permits;

- Enhanced coordination and consolidation of responsibilities for provincial and federal agencies reviewing projects; and
- Allowing provincial environmental assessments to substitute for federal assessments in order to eliminate duplication.

These best practices for coordination, clarity in responsibilities and accountability with goals and timeframes are similar to the principles reflected in Executive Order 13604 on improving performance of federal permitting and review of infrastructure projects. They also align with many of the recommendations from the President's Council on Jobs and Competitiveness. It is time to put them into practice.

Valid concerns should be fully addressed. At the same time, they should not serve as an excuse to trap projects in a limbo of duplicative, unpredictable and endless review without a decision point. We should not confuse the length of the process with the rigor of review. Predictability and reliability in our regulatory system are essential elements for supporting long term investments that produce high-paying and highly skilled jobs.

CONCLUSION

I appreciate the opportunity to testify today. Coal exports are making significant contributions to America's economic growth and job creation in the coal fields and beyond. With the right public policies, we can double that contribution and provide more Americans the opportunities for high wage and highly skilled jobs.

Mr. WHITFIELD. Thank you, Mr. Quinn.
Mr. Eisenberg, you are recognized for 5 minutes.

STATEMENT OF ROSS E. EISENBERG

Mr. EISENBERG. Good afternoon, Chairman Whitfield, members of the subcommittee. Thank you for having me here today to express the views of the National Association of Manufacturers and our 12,000 members, and also of the Alliance for Northwest Jobs and Exports, a broad coalition of manufacturers and agricultural, labor, civic, and other organizations that support new export projects in Oregon and Washington State, the projects we have been talking about today.

The NAM was founded in 1895 on principles of free trade. At the time, the United States was in the midst of a very deep recession, and many of the Nation's manufacturers saw a strong need to export their products. The NAM believes that free trade and open markets should govern in the context of energy exports, and we also oppose bans or other similar market-distorting mechanisms to energy exports.

Although today's hearing has focused on both LNG and coal, my testimony today will focus primarily on coal. Manufacturing jobs support coal exports in the United States. These jobs include mining and support activities for mining, construction, railroad transportation, transport by water and truck, port operations and cargo handling, and all the manufacturing supply chain jobs that support all of these activities. Now the economic impact of the three terminals here today, Marrow Pacific, Millennium Bulk terminals, and Gateway Pacific terminal, if allowed to move forward, would be very significant. All together, the three port expansions hold the potential to create as many as 11,730 jobs and \$831.4 million in wages for the Pacific Northwest. This is an undeniably large economic boost for our region which, like the rest of the country, still continues to fight against high unemployment. These projects would trigger increased activity from a wide range of manufacturing industries, including cement, iron and steel, wood products, aluminum, transportation, and shipping, among others.

The NAM and the Alliance were very pleased to hear today that the Army Corps will abide by the law and the regulations and carefully consider each coal export proposal on its merits while appropriately bounding the scope of their analysis and their consideration of the impacts. The Corps determined that neither a programmatic nor an area-wide or regional EIS are appropriate when considering the proposed permits for the three projects. The facts and circumstances related to each project differ substantially, and they are not the type of connected actions that warrant any sort of combined review. We are encouraged that the Corps is committed to carrying out its duties in accordance with the law. This is a great first step towards creating thousands of manufacturing jobs in the region.

Now, opponents of these projects have characterized this as a choice between the environment and the economy. It is not. These three infrastructural projects plan to fully comply with all the required environmental laws and regulations. The projects will thoroughly examine air quality, water quality, marine life, wetlands,

human health, rail traffic, vessel safety and traffic, endangered species, and the dozens of other potential impacts of their projects required by all federal, State, and local permitting laws. They would like nothing more than to proceed with the permitting process in an orderly fashion as the law requires. The Corps appears ready to give them that opportunity.

Understand, however, that what the law requires isn't necessarily what the opponents are calling for. They are asking to broaden the scope of the environmental review to such a degree that the analysis will be so long and so exhaustive that it will delay the projects indefinitely. Both Mayor McGinn and Mr. Golden will testify here today that they flat out oppose the terminals and they believe a cumulative programmatic or area-wide EIS is what it takes to stop the projects from being built. To their credit, they are being pretty transparent about their goal. Now I respect their opinions and their positions, but I worry that their quests to stop these projects can have serious consequences for all exports.

A cradle to grave life cycle impact analysis that includes the environmental impact of the cargo, in this case, the coal, would be a very, very dangerous precedent to be setting, because everything we ship has a life cycle and environmental impact. So what if the cargo was another fuel or a bulk agricultural product like wheat or corn or soybeans? Would the government need to perform a programmatic EIS to determine the life cycle and environmental impact of that? In the case of corn, would the EIS have to look at the environmental impact not only in the transportation of the products, but also the planting, cultivating, growing, and harvesting of crops? What if the cargo were cars, tractors, electronics, toys, steel, chemicals, pumps, air conditioners? You can see where I am going here. How far up and down the supply chain would agencies be required to go to assess the impact? The possibilities are literally endless and are very, very deeply troubling to manufacturers.

When NEPA was enacted in 1969, the intent was require federal agencies to account for, document, and disseminate to the public the environmental impacts of their actions. Congress's intent in enacting NEPA was not to curtail or significantly delay federal action. NEPA requires excellent action, but there are boundaries to that action and those boundaries must be respected. Free trade and exports aren't particularly divisive concepts in the United States, but for some reason—and as we are seeing here today, for some reason when you put the word “energy” in front of export, we all wind up wrapped around the axle. The United States is energy-rich and domestic supply will soon exceed demand. Exports of energy are a reality. Manufacturers support an objective, orderly, and ultimately legal permitting process for energy exports.

Thank you.

[The prepared statement of Mr. Eisenberg follows:]

Testimony of Ross Eisenberg
Before the House Committee on Energy and Commerce
Subcommittee on Energy and Power
Hearing on: "U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export"
June 18, 2013

The National Association of Manufacturers (NAM) was founded in 1895 on principles of free trade; these principles continue to be embedded in the NAM's policies today. The NAM believes free trade and open markets should govern in the context of energy exports, and we oppose bans or similar market-distorting barriers to energy exports. Manufacturers support the President's National Export Initiative and his goal of doubling U.S. export capacity by 2015.

The strategic advantages the Pacific Northwest presents for trade with Asia have led investors to propose three projects to expand existing port infrastructure to export coal. Although domestic coal demand is waning due to a combination of market forces and stricter regulations, international demand for coal is surging. To meet growing worldwide demand for coal and other exports, a consortium of port operators and coal producers have proposed an expansion of three existing ports in Oregon and Washington. The port expansions will be paid for by private investment, not taxpayers, and built in compliance with strict local, state and federal environmental regulations. These three projects—the Morrow Pacific Project, Millennium Bulk Terminals, and the Gateway Pacific Terminal—hold the promise of over 11,500 jobs for the region, an undeniably large economic boost for areas which, like the rest of the country, continue to fight against high unemployment.

In the case of coal exports, the market is not a barrier. The barriers are entirely regulatory and legal. The three proposed export projects plan to fully comply with all required environmental laws and regulations. They will thoroughly examine air quality, water quality, marine life, wetlands, human health, rail traffic, vessel safety and traffic, endangered species and the dozens of other potential impacts of their projects required by federal, state and local permitting laws. They would like nothing more than to proceed through the permitting process in an orderly fashion, as the law requires. However, "what the law requires" does not appear to be good enough for the groups that oppose these projects. These groups have waged a campaign to block the projects by calling on regulators to broaden the scope of the environmental review to such a degree that the analysis will be so long and so exhaustive that it will delay the projects indefinitely. Specifically, opponents have called for a "cumulative, programmatic" environmental review that includes a broad-ranging analysis of the impacts from all proposed coal export projects in the Pacific Northwest. This "cumulative, programmatic" review would also include a lifecycle environmental analysis of the commodity being transported—in this case, coal.

A "cumulative, programmatic" EIS of this type would be contrary to the law and would create a very dangerous precedent that could be used to block exports. The agencies involved could be laying the foundation for similar exercises for virtually every infrastructure project within the United States that would transport and export cargo of any kind. Similarly, opponents of LNG exports almost certainly would use a bad decision from the Army Corps that expands the scope of the coal export EIS process to then broaden the reviews for LNG export projects to include the upstream environmental impact of hydraulic fracturing.



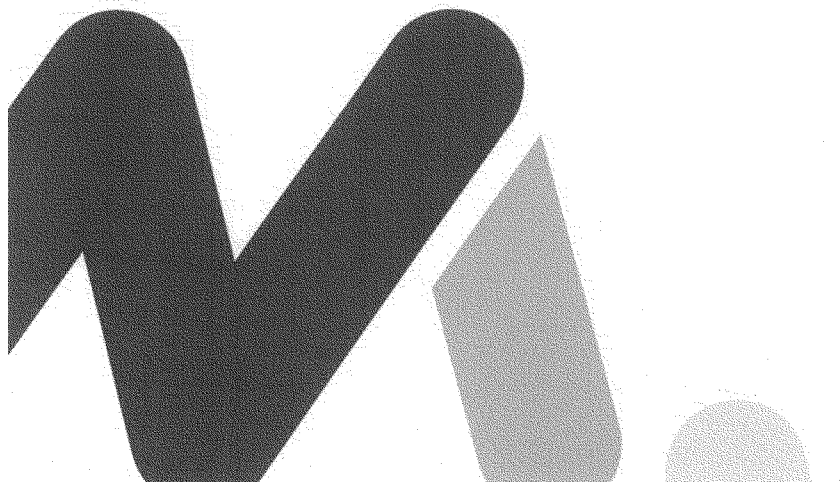
Testimony

of Ross Eisenberg
Vice President
Energy and Resources Policy
National Association of Manufacturers

*before the House Committee on Energy and Commerce
Subcommittee on Energy and Power*

on "U.S. Energy Abundance: Regulatory, Market and Legal Barriers to Export"

June 18, 2013



**TESTIMONY OF ROSS EISENBERG
BEFORE THE HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND POWER**

Hearing on:
"U.S. Energy Abundance: Regulatory, Market and Legal Barriers to Export"

JUNE 18, 2013

Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee on Energy and Power. My name is Ross Eisenberg, and I am vice president of energy and resources policy at the National Association of Manufacturers (NAM). The NAM is the nation's largest industrial trade association, representing nearly 12,000 small, medium and large manufacturers in every industrial sector and in all 50 states. The NAM is also a founding member of the Alliance for Northwest Jobs & Exports (the Alliance), a broad coalition of manufacturers and agricultural, labor, civic and other organizations. The coalition has come together to support new export projects in Oregon and Washington State. I am pleased to represent the views of both the NAM and the Alliance at today's hearing on U.S. energy abundance and the regulatory, market and legal barriers that stand in the way of energy exports.

The NAM was founded in 1895 on principles of free trade. At the time, the United States was in the midst of a deep recession, and many of the nation's manufacturers saw a strong need to export their products. This commitment to free trade and open markets continues to be embedded in the NAM's policies today. Exports have been and continue to be a critical source of growth and

opportunity for manufacturers throughout the United States. The 40 percent increase in goods exports that the United States has enjoyed between 2009 and 2011 has enabled many manufacturers to sustain and, in some cases, even grow employment during very difficult economic times. Export growth is vital not just for businesses that directly export, but for the many suppliers of inputs and services to those businesses throughout every state. Manufacturers support the President's National Export Initiative and his goal of doubling U.S. export capacity by 2015.

The United States has a mix of energy resources and innovative technologies unmatched by any other nation in the world. The United States is the "Saudi Arabia of coal" and has for years relied on its dominant coal reserves for baseload power generation. More than 100 nuclear power plants cleanly and efficiently produce a substantial portion of the nation's electricity. Renewable sources are growing quickly and diversifying the nation's energy portfolio. Advances in energy efficiency continue to cut manufacturers' energy costs. Most recently, technological breakthroughs have made vast domestic deposits of oil and gas cheaply and easily accessible, offshore and onshore.

The United States is, perhaps more than any other nation, energy rich. Therefore, we believe a true "all-of-the-above" energy strategy that embraces all of our nation's energy sources and available technologies—including oil, gas, coal, nuclear, energy efficiency, alternative fuels and renewable energy—can help fuel a manufacturing resurgence in the United States.

The nation's commitment to an “all-of-the-above” energy policy has already borne significant fruit: domestic supplies of fossil fuels greatly exceed projected domestic demand. As a result, producers of these commodities, and the manufacturers that support them, are turning increasingly to global markets. Consistent with our policy, the NAM believes free trade and open markets should govern in the context of energy exports, and we oppose bans or similar market-distorting barriers to energy exports.

Pacific Northwest Exports, Coal Exports and Their Value to Manufacturers

Today, one in four jobs in the Northwest is related to trade. Hundreds of thousands of jobs are supported by the hundreds of billions of dollars in products that pass through Washington and Oregon ports each year. In 2012, Oregon exported more than \$18 billion worth of goods, including electronics, wheat, chemicals, soybeans, civilian aircraft, semiconductors, trucks, road tractors, petroleum products, potatoes and X-ray film.¹ More than half of the state's exports were to Asia. Washington exported twice that much—more than \$36 billion worth of goods, including civilian aircraft, soybeans, wheat, apples, petroleum products, wood, silicon, mink fur skins, petroleum coke, cherries, copper and enriched uranium.² Just under half of Washington's exports were to Asia.

The strategic advantages the Pacific Northwest presents for trade with Asia have led investors to propose three projects to expand existing port

¹ Source: U.S. Census.

² *Id.*

infrastructure to export coal. Although domestic coal demand is waning due to a combination of market forces and stricter regulations, international demand for coal is surging. Within five years, annual global coal demand is expected to grow by approximately 1.3 billion tonnes.³ The bulk of this demand will come from Asia. By 2016, coal-fueled generation of more than 395 gigawatts is expected worldwide. Steel production will grow 20 percent, requiring an additional 200 metric tons per year of metallurgical coal. Seaborne demand is expected to grow at 7 percent compound annual growth rate.

The United States has been exporting coal for years. Over the past two decades, 4–10 percent of the coal produced annually in the United States has been exported. Coal has been exported through ports in more than 20 states, including Virginia, Louisiana, Maryland, Alabama, Washington, Ohio, New York and California. Virtually every region in the country has exported coal, including the Pacific Northwest.

Manufacturing jobs support coal exports in the United States. These jobs include mining and support activities for coal mining; construction; railroad transportation; transport by water and truck; port operations and cargo handling; and all the manufacturing supply chain jobs that support these activities. A study performed by Ernst & Young for the National Mining Association⁴ concluded that in 2011, there were 39,350 people whose employment was directly tied to coal exports. There were also tens of thousands of indirect and induced jobs from

³ Peabody Energy 2012 Annual Report, *available at* <http://www.peabodyenergy.com/mm/files/Investors/Annual-Reports/PE-AR2012.pdf>.

⁴ “U.S. Coal Exports: National and State Economic Contributions,” May 2013, *available at* <http://www.uscoalexports.org/data/National-and-State-Economic-Contributions-5-22-13.pdf>.

coal exports, ranging from retail, wholesale and logistics to hotels and restaurants to the manufacturing supply chain. Overall, the study concluded that coal exports added \$16.5 billion in gross value to the U.S. economy.

Three Proposed Export Expansion Projects

To meet growing worldwide demand for coal and other exports, a consortium of port operators and coal producers have proposed an expansion of three existing ports in Oregon and Washington. The port expansions will be paid for by private investment, not taxpayers, and built in compliance with strict local, state and federal environmental regulations. These three projects are the following:

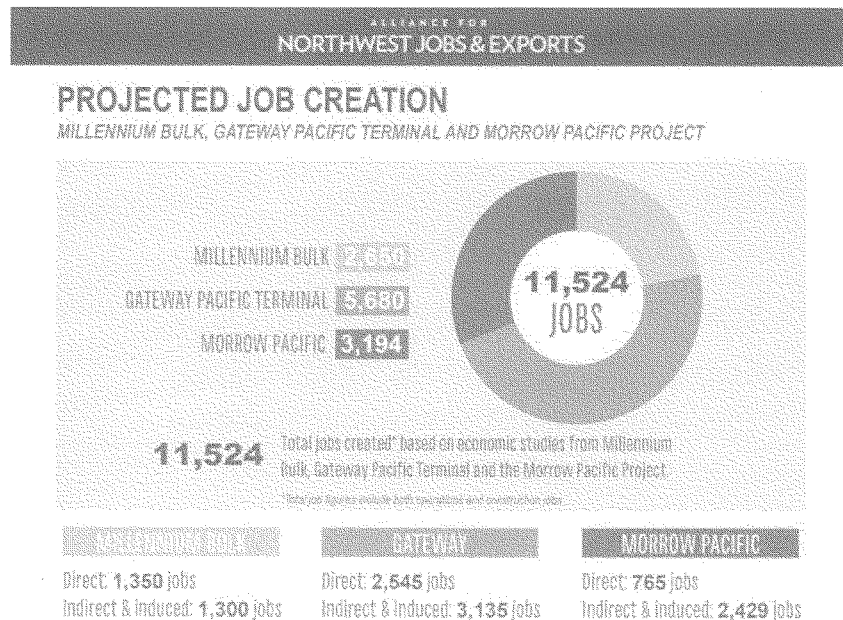
- The ***Morrow Pacific Project***, which would transport coal from Intermountain states to the Port of Morrow near Boardman, Oregon. From there, it will be transferred to an enclosed storage facility and loaded onto covered barges through an enclosed conveyor. The coal will then be shipped down the Columbia River to Port of St. Helens' Port Westward Industrial Park. From there, enclosed transloaders will transfer the coal onto covered oceangoing Panamax ships. Initially, one four-barge tow per day will move down the Columbia River, shipping 3.5 million metric tons of coal per year to trade allies such as Japan, South Korea and Taiwan. At full capacity, barge tows will increase to two per day, with expected shipment of 8 million metric tons per year.

- ***Millennium Bulk Terminals***, a state-of-the-art storage and loading facility in Cowlitz County, Washington. The project would reinvest in an underutilized 416-acre site, upgrade the existing import/export bulk facility and construct a coal receiving, storage and shipping terminal.
- The ***Gateway Pacific Terminal***, a deepwater multimodal terminal for the import and export of dry bulk commodities in the Cherry Point industrial area of Whatcom County, Washington. The total site is roughly 1,500 acres, and development would occur on approximately 334 acres. At full operation, the Gateway Pacific Terminal would have the capacity to export and import approximately 54 million metric tons per year of dry bulk commodities, including, but not limited to, coal, grain products, potash and calcined petroleum coke. In a separate project, BNSF Railway Company plans to modify existing rail facilities to accommodate increased rail traffic to the expanded port facility.

The economic impact of the three port expansions, if allowed to move forward, would be significant. The Morrow Pacific Project would create 2,100 direct and indirect jobs and \$126.9 million in wages during construction, and 1,000 direct and indirect jobs and \$67.2 million in wages during operation. The Millennium Bulk Terminals would create 2,650 direct and indirect jobs and \$135 million in wages during construction, and 300 direct and indirect jobs during operation. The Gateway Pacific Terminal would create 3,587–4,429 direct and indirect jobs and \$282.2 million–\$348.7 million in wages during construction, and 867–1,251 direct and indirect jobs and \$91.5 million–\$128.6 million in wages

during operation. Altogether, the three projects hold the potential to create 10,504–11,730 jobs and \$727.8 million–\$831.4 million in wages for the region.⁵

The three proposed projects can provide an undeniably large economic boost for the region, which, like the rest of the country, continues to fight against high unemployment. Both Morrow County (7.5 percent to 9.7 percent) and Cowlitz County (9.7 percent) have unemployment rates substantially higher than the national average. These projects would trigger increased activity from a wide range of manufacturing industries, including cement, iron and steel, wood products, aluminum, transportation and shipping.



Source: Alliance for Northwest Jobs & Exports

⁵ Alliance for Northwest Jobs & Exports, <http://createnwjobs.com>.

The Alliance for Northwest Jobs and Exports

The Alliance was formed in 2012 to promote the value of increased exports in the Pacific Northwest, particularly proposals to expand existing port capacity to accommodate coal exports. Since its inception, the Alliance has seen its membership grow substantially; it now includes companies and labor, civic and other organizations that understand the importance of exports to the Pacific Northwest and want to strengthen our trade economy.⁶ More information about the Alliance can be found at <http://createnwjobs.com>.

Regulatory and Legal Barriers to Complete the Projects

In the case of coal exports, the market is not a barrier. The barriers are entirely regulatory and legal. Because these are multimodal projects with a

⁶ The Alliance's diverse membership includes the following: Agrium Inc.; Ambre Energy North America, Inc.; American Council of Engineering Companies of Montana; American Council of Engineering Companies of Washington; Arch Coal; Associated General Contractors of Washington; Associated Industries of Spokane; Association of Washington Business; Billings Chamber of Commerce/Convention and Visitors Bureau; BNSF Railway Company; Brotherhood of Locomotive Engineers and Trainmen, Washington State Legislative Board; Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters; Campbell County Chamber of Commerce; Campbell County Economic Development Corporation; Carpenters Industrial Council; Cloud Peak Energy; Durham & Bates Agencies Inc.; Franklin County Farm Bureau; Greater Spokane Incorporated; Gunderson Marine; Idaho Association of Commerce and Industry; Idaho Chamber Alliance; International Trade Alliance; JH Kelly; J.R. Simplot Company; Lampson International Cranes; Lydig Construction; Monical Engineering; Montana Chamber of Commerce; Montana Coal Council; Montana Contractors' Association; Montana Rail Link, Inc.; National Association of Manufacturers; National Mining Association; Oregon Building Trades Council; Pacific Merchant Shipping Association; Pacific Northwest International Trade Association; Peabody Energy; Pederson Brothers Incorporated; Portland Business Alliance; Portland & Western Railroad, Inc.; Southeastern Montana Development Corporation; SSA Marine; Tidewater; Transportation Communications Union—International Association of Machinists; Union Pacific; United Transportation Union—Montana State Legislative Board; United Transportation Union—Oregon State Legislative Board; United Transportation Union—Washington State Legislative Board; U.S. Chamber of Commerce—Northwest Region; Vigor Industrial; Washington Farm Bureau; Washington Farm Labor Association; Western Business Roundtable; Western Environmental Trade Association; Wyoming Business Alliance; and Wyoming Mining Association.

federal nexus, each project's sponsors must navigate a web of federal and state permitting regulations, including the National Environmental Policy Act (NEPA). That, in and of itself, is a daunting task. However, in this case, the regulatory and legal barriers have become significantly more complex because the commodity being shipped is a fossil fuel, and that fossil fuel is coal.

Both the Millennium Bulk Terminals and Gateway Pacific Terminal will be evaluated through an Environmental Impact Statement (EIS) under NEPA; the Morrow Pacific Project, due to its smaller size, is likely to receive an Environmental Assessment (EA). There is no statutory time limit, which means the environmental review process can drag on as long as agencies allow. Often, as in the case of the Keystone XL pipeline, it can drag on for many years. The only known quantitative analysis of the time required for agencies to complete an EIS—a December 2008 study by Piet and Carole A. deWitt—found that the average time for all federal entities to prepare an EIS was 3.4 years.⁷ During the deWitt's study period, the average time to complete an EIS increased by 37 days each year.⁸ This does not include any lawsuits for which the general six-year statute of limitations applies—meaning that even if a project does get approved, opponents can wait until the last possible minute before construction to file a lawsuit and halt the process.

The three proposed export projects plan to fully comply with all required environmental laws and regulations. They will thoroughly examine air quality, water quality, marine life, wetlands, human health, rail traffic, vessel safety and

⁷ Piet deWitt and Carole A. deWitt, "How Long Does It Take to Prepare an Environmental Impact Statement?" *Environmental Practice* 10 (4), December 2008.

⁸ *Id.*

traffic, endangered species and the dozens of other potential impacts of their projects required by federal, state and local permitting laws. They would like nothing more than to proceed through the permitting process in an orderly fashion, as the law requires. However, "what the law requires" does not appear to be good enough for the groups that oppose these projects. These groups have waged a campaign to block the projects by calling on regulators to broaden the scope of the environmental review to such a degree that the analysis will be so long and so exhaustive that it will delay the projects indefinitely.

When NEPA was originally enacted in 1969, the intent was to require federal agencies to account for, document and disseminate to the public the environmental impacts of their actions. Congress's intent in enacting NEPA was not to curtail or significantly delay federal action. Yet, that is precisely what opponents of these projects are trying to accomplish through their advocacy on NEPA. Rather than allowing the traditional, project/action-specific EIS process called for by the statute and prevailing case law, opponents have instead called for a "cumulative, programmatic" environmental review that includes a broad-ranging analysis of the impacts from all proposed coal export projects in the Pacific Northwest. This "cumulative, programmatic" review would also include a lifecycle environmental analysis of the commodity being transported—in this case, coal.

Proponents of a "cumulative, programmatic" EIS likely hope to suffocate each project with years of studies until the project's sponsors become frustrated with continued delays and walk away. To do so would directly violate the

regulations implementing NEPA, which clearly state that “NEPA’s purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.”⁹ Federal courts have held that “[a] programmatic statement is appropriate only where the proposal itself is regional or systemic in scope, or where the proposal is one of a series of interrelated proposals that will produce cumulative, system-wide effects that can be meaningfully evaluated together.”¹⁰ Neither is the case here.

Similarly, expanding the focus of each review to include the cradle-to-grave environmental impact of the cargo is not permitted by existing law. NEPA requires a “reasonably close, causal relationship” for an impact to be relevant.¹¹ The Fourth Circuit recently held that the scope of an EIS should be limited to “the impacts of the specific activity requiring a [Corps] permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant federal review.”¹² In the case of the three proposed projects, this clearly does not extend to coal mining, which has already been evaluated and subjected to a variety of environmental permits and NEPA reviews through the relevant federal land management agencies, or the consumption of coal overseas.

More troubling, a cradle-to-grave, lifecycle impact analysis that includes the environmental impact of the cargo and all similar cargo transported through the region would create a very dangerous precedent that could be used to block

⁹ 40 C.F.R. § 1500.1(c).

¹⁰ *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 374 (D.C. Cir. 1981).

¹¹ *U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

¹² *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

exports. The agencies involved could be laying the foundation for similar exercises for virtually every infrastructure project within the United States that would transport and export cargo of any kind. What if the cargo was another fuel or a bulk agriculture product like wheat, corn or soybeans? Would the government need to perform a programmatic EIS to determine the lifecycle environmental impact of that cargo? In the case of corn, would the EIS have to look at the environmental impact related not only to the transportation of the products, but also the planting, cultivating, growing and harvesting of crops? Would agencies be required to take into account the impact of processing these crops and the impact that its workers had on the environment as they traveled to and from work? What if the cargo were cars, tractors, electronics, toys, steel, chemicals, pumps, air conditioners, elevators or airplanes? How far up and down the supply chain would agencies be required to go to assess the impact? The possibilities are endless and are deeply troubling to manufacturers.

The notion that bad precedent here could cascade to other types of exports is far from fiction. In fact, opponents of exporting liquefied natural gas (LNG) have already tried a similar tactic. The Federal Energy Regulatory Commission (FERC) was urged recently to consider the upstream implications of natural gas development (e.g., hydraulic fracturing) when permitting LNG terminals and related pipeline infrastructure in Maryland and Oregon. FERC concluded that upstream natural gas development is not a reasonably foreseeable impact of the construction of an export terminal or related pipeline infrastructure, a finding consistent with NEPA, which requires a "reasonably

close, causal relationship" for an impact to be relevant.¹³ In the context of NEPA, coal and LNG exports are inextricably intertwined: opponents of LNG exports almost certainly would use a bad decision from the Army Corps that expands the scope of the coal export EIS process to broaden the reviews for those projects to include the environmental impact of hydraulic fracturing.

Conclusion

There is a fundamental belief embedded in our nation's environmental laws that the environment and the economy can coexist; that we can depend on our laws and the agencies obligated to carry them out to identify what we have to do to minimize a project's impact on the environment and then move forward and build. That is all we are asking for on coal exports.

Energy exports from the Pacific Northwest could provide a major economic boost to a region of the country that desperately needs it and could bring the Administration closer to its goal of doubling exports by 2015. The NAM, on its own and on behalf of the Alliance, strongly supports a project/action-specific environmental review for each individual coal export terminal proposal, in keeping with NEPA's goal of "straightforward and concise reviews and documentation that are proportionate to potential impacts."¹⁴

¹³ *U.S. Department of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004).

¹⁴ Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, "Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act," March 6, 2012.

Mr. WHITFIELD. Thank you, Mr. Eisenberg.
Mr. Golden, you are recognized for 5 minutes.

STATEMENT OF KC GOLDEN

Mr. GOLDEN. Mr. Chairman, Ranking Member Rush, members of the committee, thank you for the opportunity to testify today. My name is KC Golden. I am the policy director for Climate Solutions. We are a regional organization focusing on promoting practical and profitable solutions to global warming. I am here today to talk about coal export. Not about corn, not about toys, but about coal exports.

Proposed coal export projects are a very big deal for our region, and so we appreciate your willingness to carefully examine the costs and benefits before proceeding. Northwest citizens and communities are deeply concerned about the impacts of coal export on public health, on property values, on existing jobs, on Main Street businesses, and our economic future. In my brief comments, I will focus primarily on the climate impacts, but I want to emphasize that all of these impacts deserve full and fair consideration before any public decisions are made to issue permits or leases, let alone subsidies for coal export.

We take climate disruption very seriously in the Northwest. We have to. Our mountain snow pack is critical economic infrastructure for our region. Our fishing, our farming, our forestry communities depend critically on that snow pack. Our power system is built on it. And like communities everywhere, we are concerned about increasing and growing risks from extreme weather to human life and human property in the Northwest. And so Washington and Oregon and communities in the Northwest are implementing climate action plans now. We know we can't fix this problem alone, but we are determined to do our part. We are determined to prove up effective solutions in our communities. The centerpiece of these plans is our transition to a clean energy economy. Our commitments to energy efficiency and to clean energy and to transportation choices are working. Our economy is stronger. Our industries are more competitive. Our communities are healthier. Our emissions are down, and our future is looking up because of these commitments.

And so now, turning from that strategy to coal exports would be a tragic and abrupt reversal from that successful strategy for the Northwest. And dumping over 100 million tons of coal a year into global energy markets would have significant irreversible impacts on the climate, and therefore on our communities as well.

Now the coal industry argues that our coal would simply replace other sources of supply and not increase in that emissions. Our understanding is that supply and demand doesn't work that way. It will only replace other sources of supply insofar as it is cheaper, otherwise they wouldn't buy it. And if it is cheaper, then more of it will be consumed. Now if it turns out to not be cheaper and this coal isn't competitive in these markets, then these projects may well go belly up as previous coal export projects did, leaving our community with substantial stranded costs. Neither outcome is acceptable to us.

Economic modeling of this emissions effect shows that emission increases would be substantial, and even more troubling, they would have the effect of green lighting the investment of enormous amounts of capital into new coal infrastructure in the fast growing Nation economies. And by the way, these are coal plants that lack the technology to sequester or responsibly dispose of the carbon. The International Energy Agency is one that these long-lived capital intensive investments would lock in emissions that virtually guarantee dangerous climate disruption. The coal industry disputes this analysis, so instead of trying to exclude analysis of climate impacts from the environmental process, I would suggest that they welcome the opportunity to set the record straight and a rigorous, transparent evaluation of these impacts. This is obviously a much longer discussion than we have today, and so let me close by emphasizing this simple request for federal agencies and decision makers. Please examine all of the relevant impacts carefully, rigorously, transparently, and comprehensively, including climate effects, before any public permits or subsidies are issued for coal activity. Let's look at whether coal leases for export are fair to federal taxpayers and in the public interest before BLM issues any more of them. Let's not be afraid to ask and answer the big questions about how this will affect our economic future and the climate that our kids will live in. These are big, fateful decisions, not just for the region, but for the country. These choices deserve full transparency and public accountability. All we are asking is that we simply look before we leap, and make these decisions in the full light of day.

Thank you. I look forward to any questions you may have.

[The prepared statement of Mr. Golden follows:]

**Testimony of KC Golden
Policy Director, Climate Solutions**

before the

**Committee on Energy and Commerce
Subcommittee on Energy and Power
U.S. House of Representatives**

June 18, 2013

Mr. Chairman, Ranking Member Rush, members of the committee, thank you for this opportunity to testify on the impacts of coal export on climate disruption and the Pacific Northwest. With the prospect of coal export, our region finds itself unwittingly positioned at an important global crossroads with respect to climate and energy. Our decisions will bear heavily on the energy future, advancing or undermining our ability to deploy effective climate solutions in a timely and responsible way.

Coal export decisions will also have far-reaching impacts on the health and vitality of our local communities and the strength of our regional economy, impacts that will be addressed in other testimony today. My testimony will touch on some of these impacts, as they are related to the larger questions about our energy future and climate impacts. I will focus on five points:

- 1. Coal export would represent an abrupt reversal for states and communities that have staked their economic strategies on clean energy, healthy communities, and economic innovation.**
- 2. Exporting publically subsidized coal from the Powder River Basin would significantly increase net emissions of climate pollution, not just displace other supplies.**

3. The most destructive impact would be economic “lock-in”: commitments of enormous amounts of capital to long-lived energy infrastructure that make dangerous climate disruption unavoidable.
 4. Coal export is a weak economic strategy for America and the Pacific Northwest.
 5. Coal export presents a fateful choice: Will we pioneer the development of clean energy technologies and systems that deliver sustainable prosperity, and reap the economic rewards of that leadership? Or will we lag behind, facilitating and fueling the development of energy systems that lock us in to a future of dangerous climate disruption and economic stagnation?
-

1. Coal export would represent an abrupt reversal for Northwest states and communities that have staked their economic strategies on clean energy, sustainable development, and economic innovation.

Renewable energy isn’t “alternative” energy in Washington and Oregon. It’s the backbone of our existing power system, and the reason we enjoy some of the lowest energy costs and cleanest air in the nation. We have honed our “renewable edge” with decades of investment in energy efficiency, squeezing more work out of our hydroelectric supplies while improving the comfort of our buildings and the competitiveness of our industries.

In recent years, we have begun to add substantial amounts of new renewable resources to our energy portfolios. And we have adopted climate plans¹ that commit our jurisdictions to responsible limits on climate pollution and accelerated deployment of clean energy systems. Climate disruption and ocean acidification represent clear and present dangers² to Northwest communities and economies – threatening our water, power, and food production systems, undermining the health and productivity of our forests, eroding our shorelines, and increasing the loss of lives and property from extreme weather. We cannot solve this problem alone, but we are committed to do our part, and we believe that doing so helps us build a healthier future and a stronger, more durable economy.

These historic and new clean energy commitments are vital to the region's economy. They support our existing manufacturing and industrial base, including global leaders in aviation, wood products, and materials. They are accelerating the development of dynamic new, job-creating industries including renewable energy, energy efficiency, advanced transportation, software, and smart grid technology. And our clean energy edge is an important part of the overall quality of life that attracts investment, innovation, and an excellent workforce to our region. Clean energy leadership is part and parcel of our regional identity and our economic profile.

As a result of this leadership, we are phasing coal out of our regional energy supplies. Seattle City Light sold off its share in a coal plant in 2000, and completely eliminated net carbon emissions for the City's

¹ Washington State Executive Order 09-05, "Washington's Leadership on Climate Change," at <http://www.ecy.wa.gov/climatechange/2009EO.htm> ; Oregon Global Warming Commission Interim Roadmap to 2020 at http://www.keeporegoncool.org/sites/default/files/Integrated_OGWC_Interim_Roadmap_to_2020_Oct29_11-19Additions.pdf

² See, e.g., Washington State impact assessment at: <http://www.ecy.wa.gov/climatechange/>

power supply in 2005. In 2011, we reached a consensus agreement³ to phase out that same coal plant – the only coal-burning commercial power plant in Washington, and the source of roughly 10% of the state’s total emissions of climate pollution. That agreement enjoyed unanimous support from the plant’s owner, the local community, conservation groups, and the workers at the plant. Our successful experience with clean energy created a widely-shared sense of confidence in our ability to power our future with cleaner energy sources.

We take pride in our clean energy achievements and our commitment to climate solutions. Our communities are healthier, our economy is stronger, and our future is more secure as a result of these investments. But we know full well that no city or state can successfully address the climate challenge unilaterally. And so our climate strategies are designed to pioneer and prove out the technologies, energy systems, and transportation strategies that can power a healthy future, in our region or anywhere else. Rising to the climate challenge means not just reducing our own carbon footprint, but opening up energy pathways to economic security – pathways that work for the long haul, not just for us, but for the billions of people worldwide who yearn for economic opportunity. We call this sustainable prosperity, and we believe it’s our best future.

As Edmonds, WA City Council member Strom Peterson wrote, “Our futures are brighter and our communities are stronger because we are building vibrant local economies – great places where people want to live, work, shop, and play. Coal export is the direct opposite of that vision.”⁴ In a region that places a high economic and cultural value on innovation and quality of life, coal export would commit some of our most valuable resources to a low-value, high-impact, economically unsound use. In a region that aims to pioneer and export sustainable prosperity, coal export would position us as promoters and

³ “Transalta Agreement Shows the Power of Compromise,” *Olympian*, March 11, 2011 at <http://www.theolympian.com/2011/03/11/1574719/transalta-agreement-shows-the.html>

⁴ “Visualize Edmonds, without coal crains please,” *Edmonds Beacon*, March 22, 2012.

suppliers of unsustainable fossil fuel development to the world. In a region working for climate solutions – a region that depends on climate stability for its water, food, and power supplies – coal export would make us merchants of climate disruption.

It will be a sad day for America and a tragic reversal for the Northwest if, a few short years from now, our children can stand on our shores, watching ships sail in from Asia with solar panels and wind turbine blades and flat screen TVs, passing ships sailing from America, loaded with coal. This is not our best future.

2. Exporting cheap, subsidized coal from the Powder River Basin would significantly increase net emissions of climate pollution, not just displace other supplies.

Proposed coal export terminals in the Northwest could ship well in excess of 100 million tons of coal a year through our communities. In addition to the massive local impacts of these shipments, the carbon emissions⁵ from burning the coal would overwhelm the region's many positive commitments to climate solutions and emission reduction.

Of course, coal export from the Northwest would not be the only driver of coal combustion in Asia, and Asian nations have other sources of coal supply if we choose not to export U.S. coal. Citing this fact, coal export proponents argue that these proposals would not affect the amount of coal that is ultimately burned or the net carbon emissions from that coal⁶. (We note that these same proponents argue that emissions of climate pollution should not be included within the scope of the environmental review for

⁵ See "Coal export and carbon consequences II," Sightline Institute, at <http://daily.sightline.org/2012/05/23/coal-exports-and-carbon-consequences-ii/>

⁶ Vic Svec, VP of investor relations for Peabody Coal, said: "It's safe to say that not one more pound of coal will be used in Asia because of this terminal." *National Geographic Daily News*, October 20 2011 at: <http://news.nationalgeographic.com/news/energy/2011/10/111020-coal-port-pacific-northwest/>

these projects – a somewhat curious position if they genuinely believe that there will be no increase in emissions.)

This argument runs contrary to the basic principles of economics. If indeed Powder River Basin coal can be delivered to Asia as a competitive source of supply, then, by definition, it would be cheaper than the next available source of supply to the relevant markets (otherwise, they wouldn't buy it). And if it is cheaper, the basic dynamics of supply and demand suggest that more of it will be consumed. (And if it is not, then these projects may go belly up, as previous coal export projects did⁷, leaving port communities with substantial stranded investments.)

In "The Greenhouse Gas Impact of Exporting Coal from the West Coast: An Economic Analysis,"⁸ Dr. Thomas Power outlines this argument, noting that the market for coal in China is sensitive to price, and that the introduction of cheap new supplies will increase emissions and reduce investment in energy efficiency and cleaner energy supplies.

Dr. Power followed up this conceptual analysis with more detailed economic modeling in "The Impact of Powder River Basin Coal Exports on Global Greenhouse Gas Emissions."⁹ In this analysis he found that Powder River Basin coal could substantially undercut the existing import market in South Coastal China, which would apply pressure on other suppliers to reduce their prices, and significantly increase net emissions in the whole market. These emission increases would not be offset, he finds, by emission decreases in the U.S. resulting from export.

⁷ See "Gambling on coal and losing," Sightline Institute, at: <http://daily.sightline.org/2011/09/12/gambling-on-coal-and-losing/>

⁸ <http://www.sightline.org/wp-content/uploads/downloads/2012/02/Coal-Power-White-Paper.pdf>

⁹ http://www.powereconconsulting.com/WP/assets/GHG-Impact-PRB-Coal-Export-Power-Consulting-May-2013_Final.pdf

If the proponents of coal export dispute this analysis, we hope and expect that they will not object to a comprehensive and fair examination of the issue so that decision-makers have the opportunity to make well-informed decisions and citizens can evaluate those decisions in the full light of all the relevant facts.

It should also be noted that the overwhelming weight of the scientific evidence, summarized in the EPA's endangerment finding,¹⁰ confirms that unchecked climate disruption will have grave human consequences. Indeed, some of these consequences are already upon us. In light of these consequences, the argument that "someone else will supply the coal if we don't" seems fatalistic and irresponsible. No one can take complete responsibility for addressing climate change, but if we are to address it collectively, we do need to assume responsibility for the actions we take, regardless of what anyone else does.

3. The most disruptive impact globally would be economic "lock-in": near-term commitments of capital to long-lived energy infrastructure that make dangerous climate disruption unavoidable.

While the increases in climate pollution from coal export due to the near-term market effects of introducing a cheap new source of supply would be significant, there is a more important and destructive impact: the effect of coal export on long-term energy infrastructure investment. In its 2011 World Energy Outlook¹¹, the International Energy Agency warned that the global pattern of energy infrastructure investment must shift, decisively and immediately, away from fossil fuels or we will "lose forever" the chance to avert catastrophic climate disruption. This does not mean that we need to cease fossil fuel consumption immediately. It does, however, mean that we must *stop making the*

¹⁰ <http://www.epa.gov/climatechange/endangerment/>

¹¹ <http://www.iea.org/newsroomandevents/pressreleases/2011/november/name.20318,en.html>

situation worse with large and irreversible *new* investments that “lock-in” emission trajectories which guarantee dangerous climate disruption. And the most critical of these investments are the huge new capital expenditures for energy infrastructure in the fast-growing Asian economies – the intended market for coal export. Once these long-term investments are made, their emissions are locked in not for months or years, but for decades. And the impacts of those emissions will persist for centuries.

Fuel price forecasting is notoriously risky business, but if you are making a long-term capital bet on a coal plant, at a minimum you want to know that there’s a lot of fuel available, and that there will be enough different suppliers to give buyers some competitive leverage. The all-important question that export of Powder River Basin coal answers is *not* “Where will China and India get coal tomorrow?” The question is “Will China and India have unlimited access to the world’s coal supplies, giving them enough confidence in future prices to justify construction of a whole generation of new coal plants?” And if they make those investment decisions, there is no turning back from the climate consequences.

If you believe that carbon capture and sequestration technology will be economically viable in the future, then you would be especially concerned about the effect of these near-term investments. The coal plants that hang in the balance – the ones that would be constructed in the next decade in anticipation of cheap supplies of American coal – have neither the technological nor the geological requirements for sequestering carbon. And if you believe that solar and other clean energy innovations or new nuclear designs will make fossil fuels uncompetitive, then you should be equally determined to avoid these near-term capital investments in coal infrastructure. Once they are made, it doesn’t matter what clean energy breakthroughs we achieve – we will already be economically committed to an emissions path that guarantees a future of unrelenting climate disruption. And the capital that might have been deployed to create clean energy pathways and markets for American

innovation and technology leadership would have been squandered. The American economy would sacrifice a dynamic driver of innovation and job growth, and receive only modest fuel loading fees in exchange.

Nationally and globally, we simply do not have enough time or enough money to spend the next decade digging the hole deeper in ways that make it impossible to fill.

4. Coal export is a weak economic strategy for America and the Pacific Northwest

We strongly support the aspirations of all Washington communities to enjoy economic opportunity and good jobs. We respectfully submit that on balance, coal export would undermine those aspirations, while imposing unacceptable costs on existing businesses, local economies, and communities. This is not a jobs vs. environment situation. It's a coal export vs. jobs *and* the environment situation.

All economic development decisions are strategic resource allocation decisions. Among the resources that would need to be allocated to coal export are:

- Freight capacity, including scarce capacity on existing rail lines and the freight mobility that would be adversely affected by the many at-grade rail crossings between Montana and the west coast.
- Public investment for rail upgrades, grade separations, bridge reinforcement, erosion control, etc.
- "Airshed" capacity – the finite amount of air pollution that is allowed in some areas in order to protect public health.

- Other public subsidies including below-market leases for federal coal and the health and external public costs associated with coal extraction, transportation, and combustion.
- Brand and reputation – the quality of life attributes that attract investment and skilled workforces.

So the question for coal export is not whether it will produce jobs. It's whether it will produce *more* jobs and other economic benefits than other, competing uses of these finite resources. It is difficult to imagine an economic development strategy that would consume more of these resources while producing fewer jobs than coal export.

University of California Energy Professor Daniel Kammen suggests that coal export may produce significant profits, but few jobs for American workers, particularly insofar as it "will help Asian firms continue undercutting U.S. manufacturers, causing further job losses here at home." Kammen says "the majority of terminal profits would leave Washington and flow to Wall Street, not Main Street. The pittance paid locally in taxes — less than 34 cents a ton, according to official estimates — will be negligible compared to the public health and environmental impacts Washington citizens and ecosystems will be forced to bear."¹²

What is the net jobs impact in Washington of devoting our ability to move freight — one of the scarcest and most valuable economic resources for a trade-oriented economy like ours — to hauling fuel from Montana for use in Asia? How will increased congestion at rail crossings affect trucks, emergency vehicles, and citizens, and how will that affect our economic prospects? How will the impacts to quality of life across the state affect the health and well-being of our communities, and our ability to attract

¹² "Coal's no way to make the job market hop" *Crosscut*, January 14, 2013 at <http://crosscut.com/2013/01/14/coal-ports/112384/coal-ports-jobs-economy/>

investment and a skilled workforce for Washington's economy? What is it worth to our economy to be consistently ranked among the best places to live, and how will coal shipments affect that ranking? What is the impact on the fishing industry and tourism jobs from ocean acidification and dramatic increases in marine industrial traffic? ...on hydropower production and irrigated agriculture from snowpack loss? ...on the wood products industry from declining forest health? All of these questions need to be answered in order to assess the net economic impact of coal export.

As Pete Knutson, owner of Loki Fish Company said in his testimony at a coal export hearing: "Anyone who claims that this massive coal project is about jobs had better learn to subtract. We're weighing jobs based on the one-time exploitation of a fossil fuel versus livelihoods based on a sustainable resource."

Sustainability is a core value and a prosperity driver for communities like Bellingham¹³, where Peabody Coal aims to build a major coal terminal. As former Bellingham Mayor Dan Pike said, "...Because of our reputation as a place that values sustainability, we've had a lot of businesses that choose to locate here. And things that damage that reputation damage our economic viability as a community... [T]here are few things that are as anti-sustainability as coal is."¹⁴

It's important to note that the prospective economic benefits of coal export would occur in a few communities where the coal is mined and the terminals are sited, while adverse impacts fall on communities all the way from Eastern Montana to the coast. But even in the terminal communities, the

¹³ See, e.g., *Sustainable Connections*, Bellingham's largest business association, at <http://sustainableconnections.org/>

¹⁴ "In Northwest town, a fight against global coal," NPR, October 26, 2011 <http://www.npr.org/2011/10/26/141687537/in-northwest-town-a-local-fight-against-global-coal>

benefits are ambiguous at best. An economic study on the impact in Bellingham¹⁵ concluded that the net local effect on jobs may well be negative.

Longview, WA, another proposed target for a coal export terminal, has a very different economic profile than Bellingham. It's a hard-working community known for heavy industry and raw log exports – the kind of place, presumably, where coal export might fit in. But they've got something better in mind. The vision statement from the Cowlitz County Economic Development Plan, *"The Turning Point"*, captures that difference: "Cowlitz County will transition from a natural resource dependent economy, embrace higher value projects, and raise its profile within a broader regional market." Coal export would bury that vision, committing the port community to bear impacts that would preclude the kinds of economic development envisioned in their plan. Reverend Kathleen Patton, rector at St. Stephen's Episcopal Church worries, "If Longview winds up becoming a coal-export facility, I really do wonder if that's the last 135 jobs this town will see. Who else would be attracted to come here? I don't see how we can justify saying a few jobs here makes it all worthwhile when we're jeopardizing the health of not just the planet but even the people who are supposedly going to benefit from this export facility."

Finally, the economic merits and costs of coal export must be evaluated in light of recent revelations that coal leases in the Powder River Basin are substantially undervalued – a significant public subsidy to coal companies serving foreign energy demand. A new report¹⁶ from the Department of Interior's Inspector General highlights flaws in the calculation of Fair Market Value and failure to consider the increase in coal exports. Over 80% of the sales in the last 20 years have received only one bid. A report

¹⁵ "The Impact of the Development of the Gateway Pacific Terminal on Whatcom County," Public Financial Management, March 2012, at: <http://www.communitywisebellingham.org/economic-impacts-of-the-gpt-development/>

¹⁶ "Coal Management Program, US Department of Interior", June 2013
http://www.eenews.net/assets/2013/06/11/document_pm_01.pdf

last year from the Institute for Energy Economics and Financial Analysis¹⁷ found that uncompetitive bidding and below-market pricing has cost federal taxpayers nearly \$30 billion. Whatever merits this policy may have had in terms of lowering energy prices for American consumers do not apply in the case of coal export. We ask for a suspension of federal coal leasing¹⁸ and a thorough examination of whether and under what circumstances it is in the public interest to lease for export.

- 5. Coal export presents a fateful choice: Will we pioneer the development of clean energy technologies and systems that deliver sustainable prosperity, and reap the economic rewards of that leadership? Or will we lag behind, facilitating and fueling the development of energy systems that lock us in to a future of dangerous climate disruption and economic stagnation?**

The United States is a can-do nation, and the Pacific Northwest is proud home to some of our nation's foremost innovators and problem-solvers. And yet our national discussion of climate is afflicted with a peculiar fatalism. The discussion of coal export sometimes falls into this same pattern – a sense that things like climate disruption and global energy investment patterns are simply too big and outside our sphere of influence.

Coal export proponents find it advantageous to avoid examination of the larger implications of these proposals – particularly the impacts on climate disruption. These implications, they suggest, are simply beyond our control and beyond the appropriate jurisdiction of the relevant decision-makers. This is, of course, the problem with climate disruption in general; it's above everyone's pay grade.

¹⁷ "The Great Giveaway: An analysis of The United States' Long-Term Trend of Selling Federally Owned Coal for Less Than Fair Market Value", Institute for Energy Economics and Financial Analysis, June 2012, available at <http://www.ieefa.org/study-almost-30-billion-in-revenues-lost-to-taxpayers-by-giveaway-of-federally-owned-coal-in-powder-river-basin/>

¹⁸ Letter to Interior Secretary Jewell at <http://climatesolutions.org/files/letter-to-secretary-jewell>

And so I include this final point in order to urge that we approach these decisions in the American tradition of defining and driving our own destiny. To be sure, larger forces are at work, and we do not have unilateral control over all the relevant variables. But a variety of public decisions must be made in order to facilitate coal export – leasing public lands, issuing permits, providing public subsidies to mitigate impacts, bearing the costs of the climate disruption that coal export will help cause. We are decision-makers at a fateful crossroads, not innocent bystanders.

Because of the energy investment imperatives described above and in IEA's World Energy Outlook, it is not possible to travel both paths – sustainable prosperity and expanded coal infrastructure development. They are flatly inconsistent. And coal export presents us with a stark choice between them. Obscuring this choice is not a responsible course of action. We should make it, with our eyes open.

Above, I have outlined some of the arguments for rejecting coal export and reaffirming our commitment to sustainable prosperity. We are confident that any full and fair analysis of the costs and benefits will lead to this conclusion. And so, without further documenting the arguments against coal export here, I will conclude by simply reiterating our request to the federal agencies and decision-makers involved: please conduct a transparent, rigorous, comprehensive, cumulative analysis of the costs and benefits of these coal export proposals. Let's carefully examine the economic tradeoffs, the impacts on Northwest communities and America's future, and the climate impacts. Let's look at whether federal coal leases for export are in the public interest before we issue any more of them. Let's not be afraid to ask the big picture questions, like how this would affect America's global economic position and our ability to rise to

the climate challenge before the problem becomes intractable. Let's look before we leap, and make these decisions in the full light of day. We're confident that the facts will speak for themselves.

Thank you again for this opportunity to testify. I look forward to any questions you may have.

Mr. WHITFIELD. Thank you, Mr. Golden.
Mr. Pugliaresi, you are recognized for 5 minutes.

STATEMENT OF LUCIAN PUGLIARESI

Mr. PUGLIARESI. Thank you, chairman. Chairman Whitfield, Ranking Member Rush, thank you so much for inviting me to testify on this very important topic.

[Slide shown.]

Let's go to the first slide. I have a few graphs I would like to show you. Let me just say that over the last 10 years, we have had economic growth rate for the national economy of less than 2 percent. This is not a problem; this is a national crisis. I want to start out by seeing what happened with natural gas. If you came here in 2008 and testified of natural gas and members of the committee asked what can we do about the shortage of natural gas? Should we lease more land? Should we try new kinds of innovation? All the government witnesses would have said it doesn't matter what we do. The path you see there in blue, if you look at the vertical axis, that is truly in cubic feet per year, and in 2008, we all believed that we were going to have massive imports of natural gas. But, in fact, because of the advances in hydraulic fracturing, because of the incurred private land, because there was no NEPA review, because ideas could move quickly from one province to another, we rapidly increased our gas supplies. These are very important lessons here. It is not just the technology, it was the whole process.

[Slide shown.]

Next slide. The next slide I think shows us very clearly why the real debate is not whether we are going to export too much natural gas, but whether we may lose out from a highly competitive market and export too little. The vertical axis shows you billion cubic feet per day, and you see that narrow blue line that goes across there? That is the most likely world demand for LNG in the world market between 2020 and 2025. It is a very competitive market. All these projects we have going forward are of not much—should not be of much concern. We don't even need a DOE export process. The capital markets themselves are going to determine who gets these projects, and the real issue for our country is how do we contain the political and the regulatory risks?

I can tell you today there is no Canadian pipeline company that will consider building a line across the U.S. border. The experience of Keystone has shifted long-term expectations. This is not a friendly place to do business.

[Slide shown.]

Next slide. This shows you the Federal Energy Regulatory Commission timelines for approving projects. Once again, as you can see, it can take up to—until you get the final project, up to 9 years. I think we are much too preoccupied with exporting too more. The more likely outcome is that we are going to go slowly, very measured, and we may miss out on some markets.

[Slide shown.]

Next slide, please. If you just take the projects which are—the vertical axis here is billion cubic feet per day, and these are the projects which have contracts. Actually, these are the projects that

are most likely to get permission to proceed. And as you can see, it is very modest, somewhere between 5, 6, maybe 7 billion cubic feet a day. We don't have a process that—we should not be worried about exporting too much. That is not our problem. We have to learn to—we have to work on how we can be competitive to get a big part of this market.

[Slide shown.]

Next slide. I know we talked about coal today. One of the things I would like to point out is that, you know, how you get economic value is that you sell something for more than it costs, and it is true that if we were to expand—you see in the middle there? This curve shows you what we call the supply curve or merit order curve. The relative cost of producing coal and delivering it to Asian markets. And the U.S. can expand, for example, in the Powder River Basin, take a lot of that value and we will, as Mr. Golden pointed out, help to lower the price, but that lowering the price will be very small. The implications of that lower price will not be substantial on total coal use worldwide.

[Slide shown.]

And then finally the last slide. This is, you know, one sort of presentation of what we call the North American petroleum renaissance, and the vertical axis there shows you both our imports, and then our imports when we look at it as a North American entity, U.S. and Canada together as a percentage GNP. If we can contain our regulatory and political risk, if we can allow a relatively, you know, stable set of projects to go forward that the market wants us to do, by 2020, total non-Canadian water-borne imports into the United States are going to be virtually insignificant. As you can see, it will probably be well less than $\frac{2}{10}$, $\frac{3}{10}$ of GNP. It is for that reason that we, you know, we need to focus on this huge opportunity of high value projects which are for us. We have a large number of high value projects for some reason we can't get permission to proceed.

[The prepared statement of Mr. Pugliaresi follows:]

Summary of Main Points

Testimony by Lucian Pugliaresi before Subcommittee on Energy and Power
U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export
 June 18, 2013

- Exports of both LNG and Coal can provide a much needed boost to economic growth. However, substantial regulatory and political constraints continue to place these opportunities at risk. Economic growth over the last decade is at a crisis level of less than 2% per year. Many high value-added projects have both capital and markets and only lack government permission to proceed.
- Proposals to use DOE's review process to determine whether U.S. exports of Liquefied Natural Gas (LNG) to non-FTA destinations should be permitted are both unnecessary and counterproductive. The FERC process already limits the pace at which new facilities can be constructed.
- U.S. natural gas reserve base is vast, continues to benefit from advances in technology, all which means the domestic long-term production capacity is more than adequate to provide natural gas for domestic and foreign markets.
- Concerns by some U.S. manufacturers that U.S. exports of LNG should be constrained to save natural gas for domestic manufacturing is misplaced. Even the most ambitious plans to use natural gas for the entire range of domestic applications are highly unlikely to limit the availability of U.S. gas supplies for export markets. U.S. domestic market will remain well supplied across a wide range of scenarios.
- Coal production from the Powder River Basin (PRB) is relatively low cost including rail and shipment costs to Asian destinations. Coal production from the PRB can be produced and delivered to Asian markets at prices that will merely replace higher cost production with relatively small effects on world coal prices. Neither net world coal combustion nor GHG emissions will change substantially as a result of an expansion of U.S. PRB exports.
- Productive capital allocation and project planning essential for expanding the economy, particularly in very high-cost long-term investments such as exports of LNG require expectations that government policies will be supportive of economic growth, and not create further impediments. A traditional strength of the U.S. economy is that political risk is low and can be contained, but a wide range of policies and regulatory delays are undermining these expectations.



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Testimony

before

U.S. House of Representatives Committee on Energy and Commerce

Subcommittee on Energy and Power

**U.S. Energy Abundance: Regulatory, Market, and Legal
Barriers to Export**

June 18, 2013
Rayburn House Office Building

Submitted by:

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Chairman Whitfield, Ranking Member Rush, and members of the Subcommittee on Energy and Power, I want to thank you for this opportunity to testify on *U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export*. This is a timely hearing and I welcome the opportunity to testify before the U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Energy and Power. I am president of the Energy Policy Research Foundation, a non-profit organization that has published extensive research on developments in U.S. and world energy markets since 1944. We have been called on to testify at nearly every session of Congress in the last decade and routinely provide briefings on our research for industry, non-profit organizations, federal, state, and local agencies and Congressional staff. EPRINC has been a source of expertise for numerous government studies.

Technological breakthroughs in the production of natural gas are now opening up highly valuable opportunities for the national economy, not just for domestic use, but also by transforming some of these growing natural gas supplies into LNG (liquefied natural gas) for sales to markets abroad. New opportunities are also opening up for American steam coal exports which have experienced declining domestic demand from the growing use of natural gas in the electric power sector.

Over the last decade the national economy has grown at an average annual rate of less than 2 percent. We should view this low rate of growth as a crisis. While our rate of economic growth has its roots in a range of structural and financial setbacks within the economy, we can also point to regulatory and government policies which are delaying or outright prohibiting a large number of high value-added investments from proceeding. Exports are one area which can provide a much needed boost to economic growth if we can overcome the substantial regulatory and political constraints which place these opportunities at risk. My testimony today will focus largely on the opportunity and challenges to LNG exports. I will, however, provide some observations on the regulatory constraints to American coal exports.

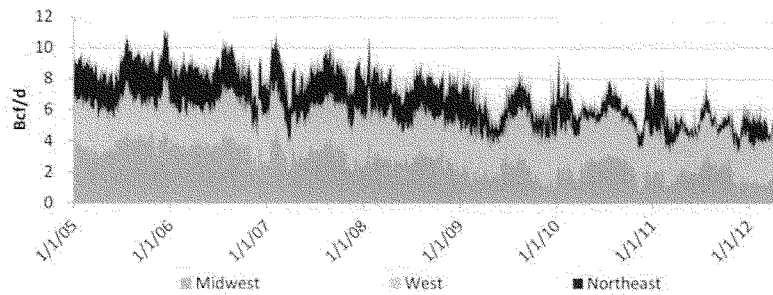
Economic Value of Natural Gas Exports

Research undertaken by National Economic Research Associates (NERA) for the U.S. Department of Energy concluded that exports of LNG yields large economic benefits to the U.S. economy. But where does the high net economic value come from when natural gas is exported? Whenever domestic resources used to produce natural gas can be sold for prices above their cost of production (including any additional processing costs) to foreigners, the national economy benefits. The economic gain occurs because the U.S. can produce a product that will make a claim on foreign resources considerably above its cost of production resulting in wealth transfers from other countries to the U.S. The surplus value from these transactions shows up in higher returns from construction of plant and equipment, additional investment in human capital, employment growth and new revenues for federal, state, and local governments. As export markets grow, opportunities emerge to expand investment to meet foreign demand. Foreign purchasers also benefit as additional supplies of natural gas on world markets provide opportunities to substitute away from more costly energy and/or meet higher environmental standards. There is also a net economic gain for sales to domestic customers in the U.S., but here the value to the U.S. is largely through improved productivity for the domestic economy and lower costs for consumers.

Proposals to Restrict LNG Exports

Many opponents of natural gas exports have raised concerns that, if permitted without controls, North America would return to an era of price and supply volatility. Note that from 2008 to 2012, the price of natural gas at Henry Hub fell from over \$10 per million cubic feet (mmcf) to less than \$4/mmcf, providing large savings to consumers and new opportunities for value added processing for U.S. manufacturers. In approximately the same time frame, as shown in Figure 1 below, U.S. net natural gas imports from Canada fell from over 10 billion cubic feet per day (bcf/d) to 4-5 bcf/d, a net loss of natural gas imports of 5-6 bcf/d to the domestic economy. This reduction in imports was driven by the sustained growth in output from domestic production from the technological breakthroughs associated with hydraulic fracturing. This rapid expansion in shale gas production occurred because it was largely free from highly restrictive government policies. The expansion of shale gas production took place almost entirely on private land and was not subject to extensive access restrictions and other federal regulations common on federal lands or on projects in which federal reviews are extensive.

FIGURE 1
NET IMPORTS FROM CANADA



Source: North Dakota Pipeline Authority, Bentek.

Concerns have been raised by certain manufacturing enterprises that natural gas in the form of LNG should not be exported, or the volumes of natural gas at least should be constrained at some level, and these gas supplies should instead be “saved” for domestic manufacturers who could then export a more valuable product. Here the claim is that the national economy would be better off in terms of employment and the net gain to the economy would be higher if natural gas exports were limited. These conclusions are not supported by economic analysis.

There are two important claims made on behalf of restricting exports. The first is that the U.S. could generate more jobs by allocating natural gas to domestic manufacturers rather than let it be exported. The problem with this argument is that capital cannot, and unless mandated by the government, will not be allocated on the basis of the number of jobs it creates, but instead its ability to generate value, i.e., a positive rate of return.

It is investment in high return projects that provides the foundation for economic expansion and job growth. Allocating investment strictly on its capacity to provide a short term increase in employment is likely to fail. For example, we could mandate a return of our agricultural sector to 17th century practices and create full employment, but our standard of living would drop substantially. None of this is to say that exports do not contribute to employment growth. Professor Slaughter of the Tuck

School of Business has pointed out that exporting companies are on average more profitable, more productive, and pay about 10-14 percent more in salaries than companies that just sell in the domestic market.

Another issue raised by some U.S. manufacturers is that diverting natural gas exports to domestic use not only provides for more employment, but actually delivers higher added value to the national economy through constraints on U.S. LNG exports. A claim is made that natural gas used in manufacturing raises the economic benefit 8 times above the value of the natural gas used as exports (see <http://www.americaenergyadvantage.org/info/growing-the-economy>). However, official U.S. data do not support this view. The U.S. Department of Commerce, Bureau of Economic Analysis (BEA) estimates that the average GDP growth multiplier for all manufacturing is approximately 2. This means that a \$1 increase in manufactured goods production results in a \$2 benefit to the overall U.S. economy.

The BEA estimates the GDP multipliers for oil and gas extraction, chemicals production, and plastics and rubber production are 1.7, 2.4, and 2.3, respectively. Some petrochemical manufacturers have claimed that the GDP multiplier is only 1 for LNG exports. This neglects the benefits of GDP growth from the LNG export industry which would include additional jobs, tax revenues, and likely increased domestic gas production. The increased gas production would have potential benefits to the chemicals industry through increased NGL (e.g., ethane) production, a common byproduct of natural gas production in many U.S. petroleum plays.

There is concern among some petrochemical and heavy manufacturing companies that the growing demand for natural gas in transportation, power production, and exports, will provide little opportunity for expansion of domestic manufacturing. For example, one petrochemical company has presented an analysis that concludes that between 2012 and 2035, U.S. demand for natural gas will grow by 55 bcf/d resulting from the replacement of one-third of the remaining U.S. coal fleet, one-fourth of daily oil imports through natural gas vehicles, and the installation of 14 LNG export terminals. Note that this estimate of 2035 natural gas demand is 50 percent higher than forecasts provided by EIA in their 2012 Annual Energy Outlook (AEO 2012).

These concerns over “excessive demand growth” in natural gas are driven from a view that all announced projects will reach a final investment decision (FID). However, it is common for companies

to announce a large number of projects, particularly as a hedging strategy when permits to construct and operate facilities are difficult to obtain, but many of these projects will never reach FID. It is worth noting the components of this expansionary view (+55 bcf/d by 2035) of U.S. natural gas demand growth. For example, for the transportation sector, the expectation among some manufacturers that natural gas demand will grow by 15 bcf/d reaching 17 bcf/d in 2035 cannot be supported by either official or industry forecasts. EIA's 2012 AEO forecasts 2035 natural gas demand less than 2 bcf/d for the transportation sector. In addition the robust view of natural gas use in transportation is not supported by trend – the growth rate for natural gas use in vehicles was steepest over the last two years (2009-2011), and applying this growth rate (9.8 percent per year) out to 2035 would yield an increase of only 2 bcf/d, not 15 bcf/d.

Another concern often raised is that if the U.S. permits large scale natural gas exports, prices will escalate dramatically and natural gas supplies for the domestic market will be severely limited. However, the potential volume of U.S. natural gas resources is substantial and subject to expansion from technological advances. Because source rock is so prolific in the U.S., technology is likely to be the main driver in the expansion of natural gas production. The U.S. is not reserve limited.

Given today's technology and prices, EIA estimates U.S. recoverable natural gas to be 2203 TCF compared to the 2005 estimate of 1600 TCF, representing a 38 percent increase. Estimates of recoverable resource by IHS and in the National Petroleum Council's (NPC) 2011 study exceed 3000 TCF. Concerns over U.S. gas supply do not recognize that significant additional U.S. natural gas resources could still be found in areas that have not been explored. This includes areas of the Arctic and extensive offshore areas under federal control, where exploration has not been allowed. Note that the Lower-48 offshore areas that have been off-limits are estimated – even without exploration – to have 77 TCF of recoverable natural gas, according to API. This expansionary view of the U.S. reserve base is supported by recent natural gas modeling efforts by Deloitte (*Economic impact of LNG exports from the United States*, Deloitte Center for Energy Solutions). The results show that the North American gas market is dynamic. If exports can be anticipated, then producers, midstream players, and consumers can act to mitigate the price impact. There is growing realization that the U.S. natural gas production can be supported at sustained higher levels with relatively modest price increases, i.e., the supply curve for natural gas is relatively flat.

We do not have a fixed amount of natural gas (technology continues to expand production potential) and we should not ignore the potential for substantial supply expansions, particularly if appropriate government policies are put into place. One of the central lessons of the shale gas revolution is the benefit of open systems where ideas move quickly from one to another petroleum province. Here the effective response to concerns over rising gas use is to permit more development of U.S. natural gas from vast federal lands not open to exploration and development. Much more attention should be given to the constraints from the regulatory structure at all levels of government that have constrained not only the growth in new petroleum supplies but the entire range of industrial facilities that can productively use rising gas supplies.

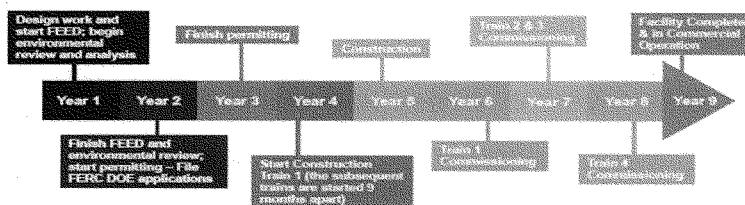
Evaluating Political and Regulatory Risk

The concern over massive LNG exports from the U.S. is misplaced because potential exporters face an extensive regulatory program that effectively limits the construction of new LNG export facilities. A short list includes: FERC approval (based on an Environmental Impact Statement which includes an Endangered Species Act review, and cultural resources assessment); Department of Energy approval of the export licenses; EPA and state approval of air permits for traditional air pollutants and greenhouse gas emissions; US Army Corps of Engineers approval of possible wetlands permits; and EPA and States approval of water quality permits. Even the US Coast Guard plays a role with a water suitability assessment. Note as shown in Figure 2 below, the FERC process combined with the long lead times to construct an LNG export facility, which can easily exceed \$10 billion, already represents an effective (and possibly excessive) process for limiting the pace at which new export facilities can come online.

The DOE review process for LNG exports should not be an evaluation to determine whether exports are in the public interest, as Congress has already established that exports should be viewed as such unless a petitioner can demonstrate otherwise. Petitioners can of course argue that they might be “harmed” from rising prices, but that outcome is remote given advances in drilling technology and the size of the U.S. natural gas reserve base. Furthermore, the deliberative and slow FERC approval process, the high costs and risks associated with siting and building an LNG facility, combined with competition from foreign suppliers all make rapid build out of U.S. LNG export capacity unlikely. Given these

existing constraints the DOE process for approving exports is both unnecessary and counterproductive. (It took 9 months for DOE to grant approval for exports from Cheniere's Sabine Pass project and two years to approve the Freeport request). In an attempt to carefully evaluate petitioners concerns that LNG exports do not harm the public interest, the slow approval process may actually harm economic growth by creating opportunities for more costly supplies from competitors to gain access to markets that would have been available to U.S. producers. The slow and uncertain regulatory approval process will have the unintended consequence of harming the public interest by strengthening the bargaining position of alternative LNG suppliers.

FIGURE 2
Permitting and Construction Timelines
for FERC Approval



Source: FERC, Industry data

LNG projects require shippers and buyers as well as banks and investors that provide funding for constructing the projects, to undertake enormous long-term risks. An LNG facility is expensive, often costing \$10-\$15 billion in direct capital investment just for liquefaction and related facilities. LNG shipping tankers can cost from \$200 million and up. It is not uncommon for an LNG project to spend in excess of \$100 million just to move through the FERC approval process. As a result, an LNG project requires agreements and complex contract structures to address the entire range of project and market risks.

The one risk that remains nearly impossible to address is political and regulatory risk and a recent report from Bloomberg points out that this risk is rising. According to a report by authors Tony Costello and Jorge Uquillas,¹ U.S. companies' perception of political risk from the U.S. Government for large scale energy projects has risen by 45% since 2005. Although we might debate whether this perception of risk by U.S. companies is accurate, we face no shortage of high value-added projects which continue face enormous delays and rising concerns over whether federal action will either prohibit a project from proceeding or provide so much delay and regulatory risk that investors remain on the sidelines.

Coal Exports

Although on a different and more modest scale, American steam coal exports can also provide substantial benefits to the national economy. The world coal market has experienced some recent setbacks from the contracting world economy, but expectations remain positive for both rising demand and higher prices for steam coal. The U.S. has a large endowment of low-cost, quality coal reserves that can be competitively shipped to high value destinations through rail and seaborne transport. According to the International Energy Agency, by 2016 coal demand in Asia is likely to increase by well over 150 million metric tons above 2011 levels. Australia and Indonesia are well placed to capture some of this market, but U.S. producers can also capture a substantial volume of this growing market.

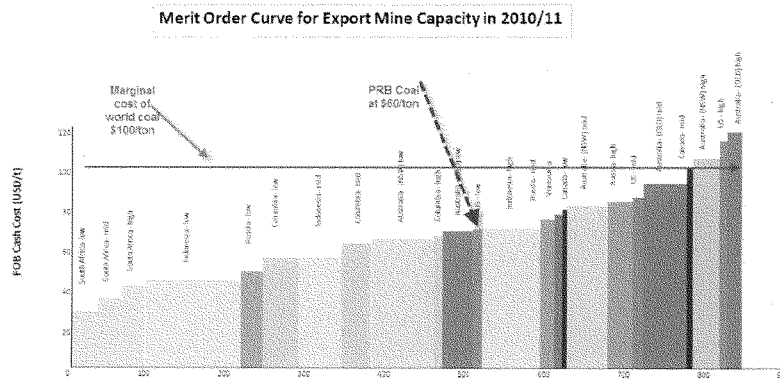
Proposed port construction and expansions in Cherry Point, Long View, and Hoquiam, Washington and other ports in Oregon offer the potential to expand total export capacity to well over 100 million metric tons. Clearly, all of these facilities will not be constructed, but interest in expanding and/or rehabilitating U.S. west coast port facilities point to Asia as the high valued destination for U.S. coal exports. Environmental groups have raised objections in two categories to port expansions and higher volumes of U.S. coal exports. The first is concern over rail traffic, congestion in scenic areas, and potentially higher volumes of coal dust. These tend to be state and local concerns which can be addressed through a number of remedies, but coal exports are also subject to a broader concern that, if

¹ Costello, Tony and Jorge Uquillas, *Companies' Perception of Risk from U.S. Government Actions on the Rise*, Bloomberg Government, June 11, 2013.

permitted in larger volumes, these exports will undermine efforts to control GHG emissions. Many environmental and other groups have called for greater restrictions on coal exports and federal action to limit the necessary permits for port expansions and other requirements to allow these exports cannot be ruled out.

Concern over the potential of U.S. steam coal exports to produce a net increase in emissions of GHGs is misplaced because of the nature of the world supply curve for coal production, known as the "Merit Order Curve." The Merit Order Curve shows the cash cost of producing and delivering steam coal to major Asian markets. As shown in Figure 3 below, coal production from the Powder River Basin (PRB) is relatively low cost including rail and shipment costs to Asian destinations. Coal production from the PRB can be produced and delivered to Asian markets for approximately \$60 per metric ton (\$54 per short ton). However, these shipments will not set the price. The U.S. is an infra-marginal coal producer, but the world price is set by the marginal producer which is likely to remain from \$90 to \$110 per metric ton. As a result, U.S. PRB production will merely replace higher cost production with relatively small effects on world coal prices. Neither net world coal combustion nor GHG emissions will change substantially as a result of an expansion of U.S. PRB exports.

FIGURE 3



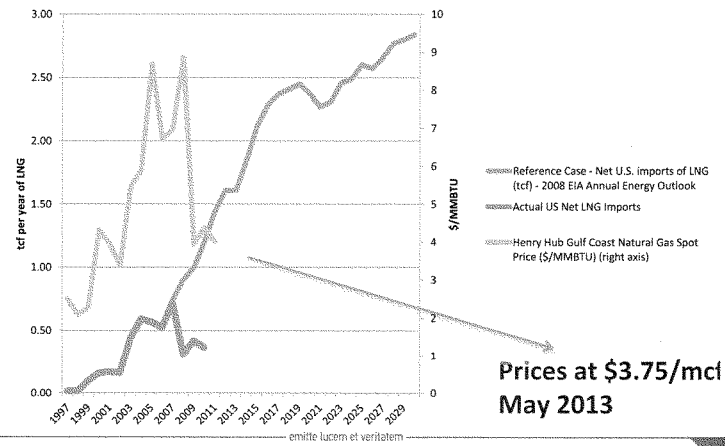
Source: Industry and national country reporting data bases, EPRINC calculations

Concluding Remarks

Improvements in the U.S. outlook for domestic production of natural gas is a remarkable achievement of American technology and innovation and LNG exports can make an important contribution to much needed economic growth. Productive capital allocation and project planning essential for expanding the economy, particularly in very high-cost long-term investments such as exports of LNG require expectations that government policies will be supportive of economic growth, and not create further impediments. A traditional strength of the U.S. economy is that political risk is low and can be contained, but a wide range of policies and regulatory delays are undermining these expectations. Government policy should send strong signals to both producers and the entire range of value-added manufacturers that our economy will remain open and that investment in new natural gas production will have access to the entire range of domestic and foreign markets. These same signals should be sent to exporters of American coal. The benefits of an open market strategy with regulatory stability and common sense policies will lift employment, bolster the national economy, and even enhance our strategic outlook.



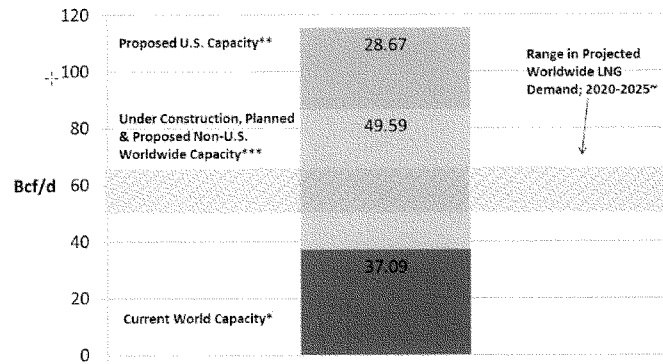
Projected Imports of LNG vs. Actual



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Proposed U.S. Projects Far Exceed Demand – Many Will Not Reach FID



*Does not include recently added 3bcf/d of FTA applications and 24.8 of Non FTA Applications.

Sources: Poten Group, ICF, U.S. DOE, Facts, BG Group, Credit Suisse

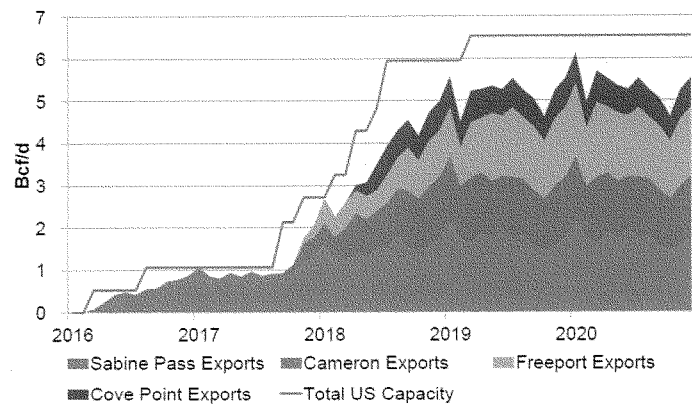
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Source: Poten Group, ICF, U.S. DOE, Facts, BG Group, Credit Suisse

Figure 1 is a project schedule diagram for a 1,000-Mw nuclear power plant. It shows a timeline from Year 1 to Year 9. Key milestones are marked with boxes above and below the timeline. Above the timeline: 'Design work and start FEED; begin environmental review and analysis' (Year 1), 'Finish permitting' (Year 3), 'Construction' (Year 5), 'Train 2 & 3 Commissioning' (Year 7), and 'Facility Complete & in Commercial Operation' (Year 8 and Year 9). Below the timeline: 'Finish FEED and environmental review; start permitting - File FERC DOE applications' (Year 2), 'Start Construction Train 1 (the subsequent trains are started 3 months apart)' (Year 4), 'Train 1 Commissioning' (Year 6), and 'Train 4 Commissioning' (Year 8). A large arrow points from Year 1 to Year 9, indicating the progression of time.

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Possible Timing of Four LNG Export Projects



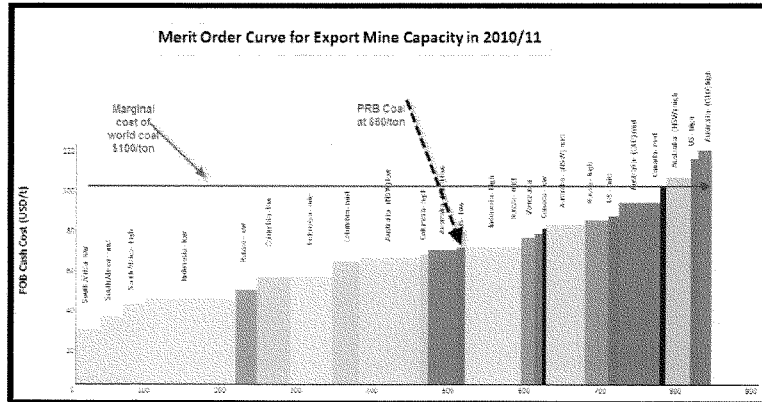
Source: Bentek

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U.S. Coal Exports Would Replace High Cost Suppliers



Source: Energy Information Administration, Macquarie, EPRINC calculations.

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Benefits of Embracing the North American Energy Renaissance

**Imports of Crude Oil and Petroleum Products
as a Percent of GNP**



Source: EIA, EPRINC Calculations

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Mr. WHITFIELD. I thank you very much, and I am going to ask unanimous consent that we include with your statement those slides, because I don't think they were formally submitted, so we will include those with them as well.

At this time, Mr. Cooper, you are recognized for 5 minutes.

STATEMENT OF BILL COOPER

Mr. COOPER. Thank you, Chairman Whitfield and Ranking Member Rush, Mr. Barton, and other members of the subcommittee. My name is Bill Cooper. I am the President for the Center for Liquefied Natural Gas. Thank you for this opportunity to present my views on the regulatory barriers to LNG exports.

The Department of Energy has issued two exceptionally well-reasoned orders in the Sabine Pass and Freeport cases, which Assistant Secretary Smith—I will abbreviate his title—Assistant Secretary Smith referenced in his testimony. Both of those orders adhered to the statute, DOE's rules and policies, and the rulings DOE has previously established in its orders it has issued. Such orders provide regulatory certainty to the community of the regulated, and I certainly commend them for their good work.

When DOE makes a decision on an application, it is a good decision. The problem is there is no certainty as to when DOE will make a decision, and its effort to establish the order in which it will proceed is unlawful. Effective December 5, 2012, DOE published its order of precedence, the queue informing the public as to the manner in which it would process the 15 applications pending before it and all subsequently filed applications. Preference was given to the pending DOE applications that had received approval from the Federal Energy Regulatory Commission to use the FERC pre-filing process in the order the DOE application was received. All other pending and future DOE applications would be processed thereafter in the order of filing at DOE. Even with its attempt to provide procedural guidance as to the order in which it will consider the applications, DOE did not provide any timelines as to when those decisions would be forthcoming. After 15 applicants reasonably relied upon the only rules DOE had published, DOE changed those rules by predating when it would consider each application, not based upon when those applications were filed at DOE, but based upon when an application filed—an applicant filed with another agency, and DOE announced that decision after the fact.

While many may argue about the conditions of the queue, namely when an applicant filed with FERC or whether contracts should be in place, that is not the issue. The issue is the establishment of the queue in the first place, or if it is accepted that a federal agency can amend its rule by agency decree and apply those amendments retroactively, there could be no end to the process and no regulatory certainty. The result would be an agency repeal of the congressionally mandated Administrative Procedures Act. DOE's issuance of its order of precedence for the queue is unlawful for the following reasons.

Number one, the establishment and use of the queue is, in essence, an amendment to the rules promulgated by DOE as set forth in Title 10 of the Code of Federal Regulations, part 590, and there-

fore is subject to the same notice and comment requirements as the original rules. Notice of the queue was not published in the Federal Register with an opportunity for the public to comment. The failure to provide such notice and comment renders the queue void. Any amendment to an existing rule cannot be applied retroactively, thus rendering their queue ineffective as to the 15 pending applications at the time of the queue's issuance, even if the queue was properly issued, which it was not. DOE should acknowledge that the queue was not properly issued and should proceed with its determinations of all pending applications based upon its lawfully established rules. With the queue being void, it cannot be applied even to the applications filed after the announcement of the queue. DOE should proceed with its determinations of all pending applications within a reasonable time from the closing of the time period set forth in the Federal Register. The mere passage of time does nothing to add to the evidentiary record upon which DOE must base its decision. That evidentiary record closed when the public comment period closed. Any federal agency should adhere to its rules. No matter how noble the intentions of an agency may be, placing retroactive duties upon applicants when it is too late for those applicants to do anything about it undermines the rule of law, the need for regulatory certainty, and the demands of justice.

Thank you for the opportunity to present my views today.

[The prepared statement of Mr. Cooper follows:]

Summary of Testimony of Bill Cooper,
President of the Center for Liquefied Natural Gas,
before the Subcommittee on Energy and Power
of the U. S. House Committee on Energy and Commerce

"U.S. Energy Abundance:
Regulatory, Market, and Legal Barriers to Export"

June 18, 2013

Effective December 5, 2012, DOE published its order of precedence (the queue) informing the public as to the manner in which it would process the 15 applications pending before it and all subsequently filed applications. Preference was given to the pending DOE applications that had received approval from the Federal Energy Regulatory Commission (FERC) to use the FERC pre-filing process in the order the DOE application was received. All other pending and future DOE applications would be processed thereafter in the order the DOE application was received.

DOE's issuance of its order of precedence (the queue) is unlawful based upon the following:

1. The establishment and use of the queue is in essence an amendment to the rules promulgated by DOE as set forth in Title 10 Code of Federal Regulations (CFR) Part 590 and therefore is subject to the same notice and comment requirements as the original rules. Notice of the queue was not published in the Federal Register with an opportunity for the public to comment. The failure to provide notice and comment renders the queue void.
2. Any amendment to an existing rule cannot be applied retroactively, thus rendering the queue ineffective as to the 15 pending applications at the time of the queue's issuance.
3. DOE should proceed with its determinations of the pending applications based upon its rules set forth in 10 CFR Part 590.
4. DOE should proceed with its determinations of the pending applications within a reasonable time from the closing of the time periods set forth in the Federal Register notices for the pending applications.

Testimony of Bill Cooper, President of the Center for Liquefied Natural Gas,
before the Subcommittee on Energy and Power
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"U.S. Energy Abundance:
Regulatory, Market, and Legal Barriers to Export"

June 18, 2013

Chairman Whitfield, Ranking member Rush, and members of the Subcommittee,
thank you for the opportunity to present my views on the regulatory barriers to LNG
exports.

Introduction

The Center for Liquefied Natural Gas (CLNG) is a non-profit trade association
whose mission is to promote fact-based discussions on liquefied natural gas (LNG),
support public policies that permit LNG exports and imports to be a part of the U.S.
energy mix, and to ensure the safe, secure, and environmentally responsible
development and operation of LNG facilities in the United States.

For the purposes of this testimony, all references to applications refer to
applications for LNG exports to countries with which the United States does not have a
free trade agreement.

The purpose of my testimony is to set forth the regulatory structure established
by the U.S. Department of Energy (DOE) regarding LNG exports and provide a critique
of DOE's decisions of general applicability regarding how it has elected to process
pending LNG export applications.

Synopsis

Effective December 5, 2012, DOE published its order of precedence (the queue) informing the public as to the manner in which it would process the 15 applications pending before it and all subsequently filed applications. Preference was given to the pending DOE applications that had received approval from the Federal Energy Regulatory Commission (FERC) to use the FERC pre-filing process in the order the DOE application was received. All other pending and future DOE applications would be processed thereafter in the order the DOE application was received.

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2. Any amendment to an existing rule cannot be applied retroactively, thus rendering the queue ineffective as to the 15 pending applications at the time of the queue's issuance.
3. DOE should proceed with its determinations of the pending applications based upon its rules set forth in 10 CFR Part 590.

4. DOE should proceed with its determinations of the pending applications within a reasonable time from the closing of the time periods set forth in the Federal Register notices for the pending applications.

Legal Authority

The statutory authority governing DOE in its deliberations of the pending export applications is Section 3(a) of the Natural Gas Act, which states:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.¹

DOE recognizes the Congressional mandate set forth in Section 3 of the Natural Gas Act, which "creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE² must grant such an application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest."³ However, Congress left it to DOE to promulgate rules as to how DOE would address applications for the export of natural gas. DOE promulgated such rules as set forth in 10 CFR Part 590.

Regulatory Process

Persons seeking to export LNG from the United States are required to file an application with DOE pursuant to the rules promulgated by DOE and publicly available in 10 CFR Part 590. The CFR is specific as to when an application must be filed (at

¹ 15 USC 717b(a)

² U.S. Department of Energy, Office of Fossil Energy

³ *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, FE Docket No. 10-161-LNG (May 17, 2013), page 6.

least 90 days in advance of the requested action⁴) and what an application must contain, including the following:

1. The project's scope, including volumes, dates of commencement and completion, and the facility description.
2. The source and security of the natural gas supply to be exported, with a description of the natural gas reserves supporting the project.
3. All participants to the project must be identified.
4. The terms of the transaction that affect the marketability of the gas must be disclosed.
5. The potential environmental impact must be described.⁵

Factual matters set forth in an application are required to be supported by data or documents to the extent practicable. If DOE finds an application incomplete, it may require that additional information be submitted to complete the application.⁶

Once an application is filed, DOE is required to publish a notice of the application in the Federal Register, providing at least 30 days from the date of publication for persons to file comments, protests or a motion to intervene or notice of intervention.⁷

"Any person wishing to become a party to the proceeding must file a motion to intervene or a notice of intervention, as applicable.⁸ The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding."⁹ In order to have the opportunity to request additional

⁴ 10 CFR Section 590.201(b)

⁵ 10 CFR Section 590.202

⁶ 10 CFR Section 590.203

⁷ 10 CFR Section 590.205(a)

⁸ State commissions may intervene as a matter of right, thus the proper method is the filing of a notice of intervention. Any other person must seek DOE approval to intervene by the filing of a motion to intervene. 10 CFR Section 590.303.

⁹ 77 Federal Register 72840

procedures as set forth in the following paragraph, a person must be a party to the proceeding.

If DOE grants a person's motion to intervene, thereby designating that person as a party to the proceeding, there are procedural options that are not available to persons merely filing comments or protests. Section 590.205(b): "The notice of application shall advise the parties of their right to request additional procedures, including the opportunity to file written comments and to request that a conference, oral presentation, or trial-type hearing be convened. Failure to request additional procedures at this time shall be deemed a waiver of any right to additional procedures"¹⁰ if the application is approved.¹¹

Once the time set forth in the Federal Register notice has expired, a party in opposition to the application who has not requested any particular "additional procedures" cannot do so later. Indeed, "If no party requests additional procedures, a final Opinion and Order may be issued based upon the official record, including the Application and responses filed by parties pursuant to [the] Notice, in accordance with 10 CFR 590.316."¹² In essence, the decision will then be based upon the documents filed in the docket. Consequently, upon the expiration of the time period set forth in the notice, no other evidence can be introduced by a party, thus closing the time period to present evidence.

After the expiration of the time period set forth in the Federal Register notice, with no requests for "additional procedures", and no evidence introduced to overcome the rebuttable presumption, "DOE/FE must grant" the application. With the expiration of the

¹⁰ 10 CFR Section 590.205

¹¹ The time periods may be extended upon good cause shown, but should be construed narrowly.

¹² 77 Federal Register 72840

time period set forth in the Federal Register notice, the mere passage of time from that date forward does nothing to add to the evidentiary record upon which DOE must base its decision. Therefore, with the official record set, DOE should not suspend consideration of an application based upon extraneous matters beyond the official record. DOE should proceed to a decision after the expiration of the time period set forth in the Federal Register.

The Queue:

Prior to December 2012, fifteen (15) applications had been filed with DOE for authorization to export LNG to non-free trade agreement countries. Effective on December 5, 2012, DOE announced an order of precedence (the queue) for processing non-FTA LNG export applications pending before it. On its website, DOE made the following announcement:

"DOE will begin processing all long-term applicants [sic] to export LNG to non-FTA countries in the following order:

- All pending DOE applications where the applicant has received approval (either on or before December 5, 2012) from the Federal Energy Regulatory Commission (FERC) to use the FERC pre-filing process, in the order the DOE application was received.
- Pending DOE applications in which the applicant did not receive approval (either on or before December 5, 2012) from FERC to use the FERC pre-filing process, in the order the DOE application was received.
- Future DOE applications, in the order the DOE applications are received."¹³

A search of the 2012 index for the Federal Register does not reveal that prior notice was given regarding the establishment of the queue.

¹³ <http://energy.gov/fe/downloads/order-precedence-non-fta-lng-export-applications>

Prior to the posting of the queue on DOE's website, DOE officials have said on numerous occasions in public forums that not all applications are created equally; noting that all that was required to file with DOE was \$50 and a fax machine. The argument was to the effect that if an applicant pursued a FERC certificate, it was evidence that the applicant was willing to commit serious money in pursuit of the project, thus providing a way to sort out the serious applicants at DOE from those who were not serious about pursuing the authorization to export LNG. Evidently, that was the basis for the establishment of the queue because no other explanation has been offered. As explained below, the problem with that rationale is that it violates the Administrative Procedures Act, adds regulatory burdens not contemplated by the rules in 10 CFR Part 590, and is to be applied retroactively for the 15 applications.

The 15 applicants as of December 2012 reasonably relied upon the only enforceable rules DOE had published, namely those appearing in 10 CFR Part 590, to inform them as to the legal path forward regarding DOE's consideration of their applications. A plain reading of 10 CFR Part 590 clearly shows that upon the expiration of the time period set forth in the Federal Register, the application process becomes ripe so that DOE could proceed with a decision on the merits of the pending applications.

The promulgated rules of DOE prior to its issuance of the queue establish a time line to consider each of the pending applications. Based upon when the applicant files a complete application, a notice is published in the Federal Register, establishing a time period for comments, protests, and interventions,

the expiration of which (without proper requests for "additional procedures" as set forth above) allows DOE to proceed on the official record to make a determination. Consequently DOE, by following its rules, will make its decisions on a case-by-case basis. DOE's rules do not contemplate the establishment of a queue to decide the pending applications because the time of filing of a complete application and the time period set forth in the notice filed in the Federal Register establishes a queue for DOE on a case-by-case basis.

Because the promulgated rules set forth in 10 CFR Part 590, by their express language, set forth a mechanism for DOE to decide applications on a case-by-case basis, any modifications, changes, or amendments must be made in the same manner in which those existing rules were made. Those rules were promulgated pursuant to the Administrative Procedures Act and its rule-making provisions, which require notice and a comment period prior to the enactment of the rule's effective date. Consequently, any changes to the rules must be subject to a notice and comment period prior to the changes taking effect.

Since DOE's establishment of the queue required adherence to the notice and comment requirements used when the existing rules were promulgated, its failure to do so renders the order of precedence (the queue) void. Therefore, DOE should proceed with deciding the applications now pending as of this date pursuant to its published rules in 10 CFR Part 590.

An argument might be made that the queue was not an amendment to a rule, but merely an internal agency procedure to assist it in executing the rules. However, the courts have routinely held that an agency pronouncement

(regardless of whether the agency chooses to call it a rule, procedure, or order of precedence) must be published if the knowledge of the pronouncement is needed to keep the parties informed of the agency's requirements as a guide for their conduct. Quite clearly, any one or more of the 15 or future applicants might have decided to file with FERC earlier if they had known that DOE was predicated the manner in which it would decide applications pending before it based upon the time of filing at FERC.

DOE may determine that its current rules need to be modified. To do so will require adherence to the notice and comment requirements discussed above, but not for the applications now pending. A rule promulgated cannot have a retroactive effect unless expressly authorized by Congress. The Natural Gas Act does not authorize such retroactive application. Any new rule promulgated by DOE will have consequences to events already completed, namely when an applicant chooses to file at DOE in the first instance. Therefore, it cannot be applied retroactively to any applications pending before DOE at the time of its issuance. Such a retroactive application of a new rule would violate considerations of fairness, reasonable reliance, and settled expectations of the parties involved.

Regarding the time in which DOE has to render a decision, it should be noted that the Natural Gas Act does not provide a time limit for an agency decision. However, the Administrative Procedures Act and the cases construing it require that an agency conclude matters presented to it within a reasonable time, and a court may compel agency action unreasonably delayed.

Conclusion

An applicant should have the reasonable expectation that upon completion of the application, its filing with DOE, payment of the filing fee, and the expiration of the comment period as established in the Federal Register notice without evidence being introduced to overcome the statutory presumption, DOE would require nothing more than the official record to render a decision. In other words, an applicant should have the reasonable expectation that DOE would follow its promulgated rules and not seek to unlawfully change the rules by agency decree. Additionally, since the order of precedence (the queue) was not properly issued, it is void, meaning that all pending applications must be determined by DOE just as if the queue was never issued. Furthermore, an applicant should be able to expect DOE to render its decision within a reasonable time after the closing of the time period set forth in the Federal Register notice.

Mr. WHITFIELD. Mr. Cooper, thank you, and I thank all of you for your testimony.

At this time, I will recognize myself for 5 minutes.

Recently I had a friend who had attended the World Economic Forum in Dalvos, Switzerland, and when he came back he was talking about so much of the discussion over there was about the energy situation in America and how Europeans and many parts of the world were genuinely concerned about the abundance of energy that we have in America. The new oil finds, the new shale gas finds, the reserve of coal that we have, and they recognize that America is really at a point that we did not expect to be not too many years ago that we do have the ability to be energy independent, strong energy security. And when we were preparing for this hearing, I was thinking about well, what are the obstacles to export? And there are divergent views on this panel, and that is why we have panels. That is why we have open discussions. That is why we have debate, to get that out there.

But in my view, the major obstacle to energy exports from this country is the Obama Administration. And when he was running for President, he really didn't talk a lot about global or climate change issues in most parts of the country. But yet, if the Council on Environmental Quality, as a result of President Obama's action, does require consideration of both the increase in greenhouse gases and a project's vulnerability to flooding, drought, or other extreme weather that might result from global warming, it is going to transform the way any project will be considered or have the opportunity to be built in our country.

It will be a major bottleneck, and what it illustrates to me is that in the energy sector, the most important issue to this Administration is global warming, more important than any job outside of the green energy sector. More important than the trade deficit of last year, \$455 billion—\$573 billion, more important than that. More important than the opportunity to reduce global poverty and increase the standard of living because of the millions of people in the world who do not have electricity. And that is why people are coming—companies are coming to America to ask for our energy. And yet, this President and his Administration are making a statement that global warming is more important than anything else when it comes to energy. And we need to have a national debate about it, because I tell you what, the greenhouse—under the Clean Air Act, you look at pollutant, anything can be a pollutant. In the Massachusetts EPA case, they said that it is up to the EPA to make a decision, and they did their endangerment finding and they decided they were going to regulate greenhouse gases. So if they come out with this regulation where we cannot even build a new coal power plant, even though the new plant emissions are much lower than the old plants, and then if they go further and start regulating existing plants, then America is going to find itself in a very difficult situation, particularly when it comes to being competitive in the global marketplace to attract industry for jobs.

Now I am all for green energy, and we can talk about all sorts of green energy projects that work and all sorts that fail. Right across the line in Tennessee, 20 miles from my hometown of Hopkinsville, Hemlock Corporation spent \$1.3 billion building a plant

for component parts of solar panels. They said they were going to create 2,500 jobs. They built a \$20 million railroad line into that plant and they received about \$200 million of stimulus funds. Three years ago they started construction. In January, they announced they are not even going to open this plant. So the danger, from my perspective, is that the government is trying to dictate what energy will be used instead of letting the American people and the marketplace really decide that issue.

So this has been a very helpful hearing for me personally. I want to thank all of you for testifying. We have many challenges ahead of us.

My time is expired, so I will recognize the gentleman from Illinois, Mr. Rush, for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman, and you used your time to let your feelings be known. I think we understand or know how you feel now. But I want to formulate my questions on a different kind of path.

In the first panel, I talked a lot about jobs and the cost of doing business, and on the prices that the American people will be confronted with, so I would like to ask each of you, since you are on the front line, the question of what will be the net impact on prices, on jobs from your perspective if we were to export LNG and coal? And notwithstanding the treatise from my friend from Kentucky, Hopkinsville, Kentucky, I would like to know do you have any concerns about climate change also, and what other concerns. So I would—Mr. McGinn, if you would just start, what would be the net impact on prices and jobs for the American people?

Mr. MCGINN. Well, I think we look at the—clearly there are jobs in the production and transport of coal and the shipping of it, but we look at the impact on our economic activities in our cities and towns along that train route, and we see negative impacts. You also have the health impacts, for example, 200 doctors in Bellingham spoke about the impacts of diesel exhaust and coal dust on people living near an export facility. We know in particular those can hit some of our minority communities harder who live closer to those train tracks or closer to the facilities. I mentioned the Lummi Indians' concern who have lived, you know, for centuries on salmon and they are concerned about the effects on salmon.

So we see all of the positive economic activity in Seattle and our region, and the coal trains concern us, and of course we are worried about climate change, because what we do is we export the coal and it comes back to us in the form of mercury emissions which find their way into fish and find their way into all of our bodies. It comes back in the form of global warming, which has potentially devastating effects on our economy and quality of life, and that is why we, again, keep pointing to what we believe are more productive ways to create jobs.

Mr. QUINN. Thank you, Congressman. Just to follow up on the Mayor's comments, I would say this. I have already documented the economic lift from coal exports, 1,300 high wage jobs for every million tons we export. I would say if you are concerned about the impact on your locality, I respect your opinion since you are a resident, but I would say let's go to Virginia, to Norfolk, let's go to Bal-

timore, let's go to New Orleans, let's go down to the Gulf in Houston, Galveston, and I think you will find that those ports exporting amounts of coal, they are most welcoming in that economic activity and found those ports good neighbors.

In terms of climate change, let me assure you that if you need to write an EIS on what the impact is, it will be as follows. Stopping U.S. coal exports will not make any material change in global emissions of CO₂. What it will do is it will deny the opportunity of billions of people accessing electricity modern energy, as coal has over the last 2 decades—

Mr. RUSH. I would like to hear from—

Mr. QUINN [continuing]. And it will cost millions of jobs in the United States.

Mr. RUSH. Mr. Eisenberg?

Mr. EISENBERG. Thank you, Congressman. Speaking on both—and I am not an economist but I have read almost every study. On the issue in terms of just about every study that has been done on LNG and coal exports, almost every single one of them comes out with a net increase, including the ones that the government has put together, a net increase in jobs and minimal, if any, effects on price. You know, again, these are studies not done by us but some of them have been done by the government. That is almost pretty much uniformly what they say.

On climate, manufacturers are committed to reducing greenhouse gas emissions, to being more efficient, to coming up with the technologies that will deal with climate change. It is a serious issue and we take it very, very seriously.

But again, as Mr. Quinn said, is this really—the issue that we are talking about today in the context of coal exports is does climate belong in the NEPA review on a Section 10 Rivers and Harbors Act or a Section 404 permit to dredge and fill area for ships, and the answer really is no. Legally it is no. And so, it just does not belong as part of this. We do think that we are at the table for a conversation on climate but it doesn't belong legally in the context of this.

Mr. BARTON [presiding]. Gentleman's time is expired. Chair recognizes himself for 5 minutes.

Mr. Cooper, when we passed the Energy Policy Act back in 2005, I believe that you were a staff member of the Majority Staff and helped do the staff work on the conference report, is that correct?

Mr. COOPER. I was a staffer on the Energy Policy Act of 2003. Many of those provisions made it into the 2005 Act. I had left the Hill at that point in time.

Mr. BARTON. See, I thought you were here in 2005. You just took my question away.

Mr. COOPER. Maybe I should have been.

Mr. BARTON. OK, well then I won't ask the question that I was going to ask. I will make a brief statement and then I am going to ask a few questions.

None of these projects are going to be done if they don't make economic sense. Does everybody agree with that?

Mr. COOPER. Yes.

Mr. BARTON. I mean, I would—you don't agree—Mr. Golden, you don't agree with that? Why would somebody put money into a project that doesn't make economic sense?

Mr. GOLDEN. We have had at least two coal export facilities sited, built on the West Coast and abandoned for lack of global markets. I think the global markets are extremely volatile. I think we are making——

Mr. BARTON. But that is a different——

Mr. GOLDEN [continuing]. A bet that may or may not turn out.

Mr. BARTON. But at the time that they were built, there was an expectation by their developers that they did make economic sense. Do you agree with that?

Mr. GOLDEN. Sure, it just turned out to be wrong.

Mr. BARTON. Well, you know, that is the market, you know. A lot of people run for Congress with the expectation they will win. They come up with a shortage of votes and they don't meet expectations, so—but if you go from the premise that no matter how good the project is, if it doesn't pass an economic test, one, it is probably not going to be built. I will agree with Mr. Golden that sometimes rosy colored glasses work, but it certainly is not going to sustain itself.

So that when we look at these LNG facilities and when we look at the coal export facilities, we start with the premise that the people that are going to purchase the products overseas think that they will help their nations and their people and the expectation is that the people that are developing the projects to sell the natural gas or the coal believes it will make sense economically here.

Now in the interest—in the sense of the coal exports, there is really no requirement in federal law for any kind of a public interest test, is that not correct?

Mr. COOPER. Well, there is nothing, of course, Congressman, such as LNG is going through in terms of whether it is in the public interest to export.

Mr. BARTON. Because——

Mr. COOPER. You know, public interest test in the context—in a different context for the 404 permits that we have to go through to get the——

Mr. BARTON. Right, and see, because when the various federal laws that govern energy policy were passed, coal has never been considered to be something that is in a shortage potential situation——

Mr. COOPER. Correct.

Mr. BARTON [continuing]. So we didn't—the reason that natural gas has some constraints on its export is because for the last 40 to 50 years, there have been large periods of time where we thought that we were going to have natural gas shortages in the United States, so we wanted to reserve that product for domestic use. We are now in a situation where we have a potential surplus and all the indicators are that that surplus is going to grow, but even in the case of natural gas, the premise is that it is in the public interest to be exported and you have to prove otherwise.

So my question is to the panel, this latest Department of Energy decision to put a variable of cumulative impact, that is nowhere seen in any federal law that I have read. Does anybody point to a

statute that requires a variable called cumulative impact? Mr. Pugliaresi, you are shaking your head.

Mr. PUGLIARESI. No, I think the critical issue here is these are very expensive, capital intensive projects, and buyers and sellers are not going to come together if they have a lot of uncertainty in how the government is going to behave. This is the problem, and it is a worldwide market. We want to capture that extra value, because out of that extra value comes revenues to State, federal, and local governments, return on capital construction, and sustainable economic growth. The biggest problem we have had in the last 10 years is that we have lots of high valued projects with enormous economic value to the national economy, and we can't get them—we can't get permission from the government.

Mr. BARTON. My time is expired, but I plan on sitting down with Chairman Whitfield and Mr. Rush and hopefully come up with some questions for the record where we send to the Department of Energy to have them clarify a little bit more their statutory authority for using cumulative impact and to more properly define exactly what that is.

With that, my time is expired and I want to yield to the gentleman from New York for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Mayor McGinn, you described a number of ways in which a new coal export terminal could affect local communities, and you further developed that with the ranker on the committee, Representative Rush. What are the city and State doing to examine and quantify the potential impact of increased coal train traffic on air quality? Is there anything being done in that regard?

Mr. MCGINN. Yes, there are a couple of things. One is local University of Washington researcher is doing research on both the effects of the coal dust and diesel exhaust along the route. That requires setting up monitoring stations along the length of the route to understand the impacts, and he actually ended up crowd sourcing the funding for that. He was concerned that he wouldn't be able to get it from traditional sources, but he is doing that work. There is the Puget Sound Regional Council, which is our regional planning agency for transportation and economic purposes, is looking at a region-wide analysis of four, that would be the four counties that are comprised around central Puget Sound. So those are two of the analyses that are underway right now, and we are also looking at a health impacts analysis as well.

Mr. TONKO. Thank you. Mr. Eisenberg's testimony directly challenges the merits of your request for a comprehensive programmatic environmental review of all of the coal terminal proposals, and I believe the witness argues that assessing the environmental impacts of each terminal on its own should be deemed adequate. And we heard from Ms. Moyer from the Army Corps of Engineers with a similar viewpoint in her testimony. Why do you think it is important to examine all of the terminal proposals together rather than individually?

Mr. MCGINN. Well, it is embedded within the National Environmental Protection Act and our State Environmental Protection Act that you should look before you leap. You should understand the impacts of a decision before making it. We have clearly identified

a wide range of impacts along the entire length of the line. I think the question that was raised by Ms. Castor was right on point. Shouldn't some agency of government be evaluating all of the impacts, including, of course, the cumulative impacts that come from climate change? So I do not believe the decision of the Army Corps of Engineers should be allowed to stand. If we are going to understand the implications of this decision, we need to look at all the impacts, and I would say both the governors of Oregon and Washington have made the same request.

Mr. TONKO. Thank you.

Mr. Golden, again, the witness Mr. Eisenberg says a life cycle analysis of the climate change impacts of exported coal would be a mistake. He says that if the climate impacts of coal exports are examined, there will be no limit to the analysis of the climate impacts at every step of the supply chain. I am interested in your response to that concern.

Mr. GOLDEN. Well as I said, I am not here to testify about corn or toys, but about coal export. You know, that question is actually a very important question in designing a comprehensive climate policy. Where do you look at the impacts, where do you assess accountability for those emissions? Unless I mistake the committee's intentions, we are not designing a comprehensive climate policy today. I hope I will be called again when you decide to. But in this case, the choices before us are simply do we look at the climate impacts of this proposal or not? And given that those impacts are prospectively very large, and I understand that is disputed, but let's argue about that—given that those impacts are irreversible, I simply think it would be irresponsible not to look at them as part of the decision making process.

Mr. TONKO. And in terms of the approach of taking project by project assessment of potential climate change, is there a better approach than that, or—

Mr. GOLDEN. I think it is very important to look at this comprehensively. You know, some of these local decision makers, you have county commissioners and others who are looking at these permits in their jurisdictions, and I think we can forgive them for saying, you know, some of these things, the real impacts east of the mountains in other communities or the climate impacts are a little above my pay grade. We ought to—the responsible agencies ought to take a comprehensive look at that. I don't think we can afford to close our eyes. If the permit board decides that, you know, within a very narrow legalistic interpretation of its responsibility and control it can't do that, then I think we should find somebody who can.

Mr. TONKO. Seeing that my time is elapsed, I will yield back, Mr. Chairman.

Mr. WHITFIELD. Thank you very much. At this time, I recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

Mayor, when is your election coming up? Don't you have something coming up soon?

Mr. MCGINN. Yes, it is indeed. This August is the primary and this November is a general.

Mr. MCKINLEY. So this makes a good photo op here, doesn't it?

Mayor, I have got a couple questions for you, and when I read through your testimony, because it seems like maybe you left some things out that you had talked about. One is you referenced—and maybe I didn't hear right, because I don't hear as well as I should, but the—on page four you talk about on mining leasing on public lands, that there is a, in your words, "massive subsidy" for coal companies. I have got a copy of the report and I haven't found the word "subsidy" in there at all. Can you tell me where I would find that word "subsidy" that you are referring to?

Mr. MCGINN. No, and I think this goes back to the issue that the chairman was talking about, about let them—

Mr. MCKINLEY. Can you just tell me where it is?

Mr. MCGINN. Well if you will, it goes back to this issue the chairman was talking about about whether the marketplace, you know, is letting this go—

Mr. MCKINLEY. These are steel bids, are they not, Mayor? They don't have to—they can accept or reject them. There is no check, there is no subsidies to these companies and you know that. This is just a matter of you didn't like the bids that were received for that.

But I am more troubled with—

Mr. MCGINN. You are testifying now, Congressman, and it is your committee.

Mr. MCKINLEY. No, you are challenging me on the thing and Mayor, you are here before us.

Mr. MCGINN. I understand that, and I appreciate the opportunity.

Mr. MCKINLEY. On page three, you had a "more troubling" and I thought it sent a shiver up my spine, and it should for anyone from a coal producing area. When you said on page three that "we should keep our coal in the ground where it belongs." Did you really mean that?

Mr. MCGINN. Yes, I did.

Mr. MCKINLEY. That we shouldn't be mining or using coal in America?

Mr. MCGINN. This gets us the fundamental issue of climate change, and this is the difference between corn and toys and the other things that were mentioned. The difference here is that we have taken huge quantities of fossil fuels from beneath the surface of the Earth and put them into the atmosphere with potentially devastating effects upon the future of us and future generations as well.

Mr. MCKINLEY. You are entitled to have that opinion about climate change. I am willing to acknowledge that there is climate change going on. The question I am still trying to determine as an engineer—I am one of two engineers in Congress—is whether or not the climate change is caused by man or is it natural and cyclical. We can come to the agreement that it is changing. We know that, but you seem to be saying that so many on the other side that it is all due to man or burning coal fossil fuels, and that just simply does—that is why there is an ongoing debate on it, and you are coming from your position. But with all due respect, you coming here and trying to lecture us about climate change, Mayor, I would strongly suggest you take a look at the crime rate in Seattle, Wash-

ington, when you have 94 percent of the cities across America have a lower crime rate than you have in that city——

Mr. MCGINN. Well, that is actually——

Mr. MCKINLEY. When you have 3,707 violent crimes in your community and 33,248 last year, was it, I think you ought to take a look at that and become more aggressive——

Mr. MCGINN. We have one of the lowest crime rates of a large city in the country.

Mr. MCKINLEY [continuing]. About not to burn a hole in America——

Mr. MCGINN. We are at a 30-year low for our crime rate, Congressman, and——

Mr. MCKINLEY. I yield back my time.

Mr. MCGINN [continuing]. And we are proud of our police force and the work they do fighting crime.

Mr. WHITFIELD. Gentleman yields back. At this time, I recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Mr. Quinn, Virginia ranks 12th in the U.S. in total coal production. Of that total, 43 percent or nearly 11 million short tons of Virginia coal was exported abroad. Now, my district and the other districts in coal have been greatly impacted by a lot of the regulations that have come out. If exports are also taken away, what do you think is going to happen to the economy in the regions that I represent? Is it going to get better or is it going to get worse?

Mr. QUINN. Clearly worse, Congressman. Southwest Virginia, and frankly, export market is the key market because it has better margins and all that coal goes for metallurgical steel making in Europe as well as steam, so it is very important.

Mr. GRIFFITH. I knew that was going to be the answer, but I did want to get that question out on the record. The jobs that we have been seeing that we lost, almost monthly we have had announcements of people losing those jobs, and I think it was either you or Mr. Eisenberg, somebody mentioned that when you add in the benefits, you are almost at \$100,000 a year, and most people don't realize coal miners today make somewhere around \$75,000 a year, and then you add in benefits, who knows how high that goes. And so these are good paying jobs.

I would also point to you and ask you, Mr. Pugliaresi, that you mentioned something about the impacts on local, State, and the Federal Government, and one of my counties, the income that they receive from taxes in the county, not assistance they get from the Federal Government or from the State government, there are estimates that as much as 70 percent of that money comes from the coal severance tax that Virginia has. So when we cut back on coal exports, we are actually cutting money to the schools in a number of the counties in my district and I think you are aware of that, is that correct?

Mr. PUGLIARESI. Yes, and I think we are sort of missing the point. We always—I think what we are talking about, we always talk about we need more jobs, and of course we need more jobs. But we could return our economy to 17th century agriculture and we could all go to work tomorrow, but we will be very poor. We have these fossil fuels whose value in the marketplace is substantially

above their cost of production, and all that value could come to us. And it doesn't just come to the owners, it comes to State, local, and federal governments. It comes to economic growth and sustainable growth.

Mr. GRIFFITH. And to our children and grandchildren.

Mr. PUGLIARESI. That value, we should not give it up cavalierly.

Mr. GRIFFITH. I don't disagree with that at all, and in fact, politically we would be better off as well, because as somebody mentioned—and I have heard so much good testimony today, but somebody mentioned that the other nations of the world are aggressively pursuing the markets, Australia, Canada. If we don't pursue this market, they will get those markets and wouldn't we be in a better position when we have a disagreement, perhaps, with our colleagues in China if they are relying on using our coal resources to generate their manufacturing?

Mr. PUGLIARESI. I think that if you look in the place—for example, natural gas. Prime Minister Abe visited us, visited President Obama recently. There was no announcement made. I thought that was unfortunate because these exports are also elements of soft power for us.

Mr. GRIFFITH. No question about that.

Mr. PUGLIARESI. When our allies look at us and say we are a supplier of LNG, we are a supplier of petroleum products, of coal—

Mr. GRIFFITH. I am going to get your speculation here. I speculate, and I wonder if you do, too, that part of the reason that we are suddenly talking about a trade agreement with the Europeans might actually be because of our large supply of natural gas. Do you think that might be one of the things they are discussing over in Ireland as we speak?

Mr. PUGLIARESI. I am sure it is an element.

Mr. GRIFFITH. I am sure it is an element as well.

Mr. Cooper, a study by the National Economic Research Associates Group states that natural gas price increases at the time LNG exports could begin range from zero to .33 NCF per 1,000 cubic feet. I always just call it the unit that we use to measure how much it costs. Given these figures and the fact that we haven't tapped into all of our natural gas resources, like those off the shore—off the coast of Virginia and other East Coast States, do you think if we export natural gas that it is going to have any major impact on the cost of natural gas in this country?

Mr. COOPER. No. Every credible report that has been conducted that has examined the price impacts due to LNG exports have said it would be minimal, if at all.

Mr. GRIFFITH. And so the bottom line as I am hearing the testimony today is that we actually strengthen ourselves in the world, we create more wealth in the United States if we are allowed to export our natural resources of which we have an abundant supply that will last us for quite some time, and I am concerned that when the time comes and we have to deal with whatever issues are facing the country, if we are a poorer Nation, it makes it a lot harder for us to deal with those issues. If we are a richer Nation, we have got the resources to deal with whatever issues may confront us. And last but not least, I will give my plug-in again for this project

with chemical looping with hardly any pollution at all, because I think this could actually be an answer to problems that all of us are concerned about, and find a resolution for our Nation and move us forward.

I thank you and yield back.

Mr. WHITFIELD. Thank you, Mr. Griffith. Do you have anything else?

Mr. RUSH. No, I don't have any other questions, but Mr. Chairman, I just didn't realize—I mean, this is a new day for this subcommittee when you have come upon the intersection between coal and crime. I never thought we would see this day here in this committee. Never cease to amaze me in this committee—this subcommittee.

Mr. WHITFIELD. That is why this committee is so interesting.

Mr. Cooper, if you wouldn't mind just providing the committee your thoughts on the criteria that DOE should use in deciding what order to proceed on these pending applications. You talked a little bit about that in your testimony. Would you mind just giving us your views on that?

Mr. COOPER. Yes, sir. The existing Code of Federal Regulations which contain the promulgated rules by the Department of Energy essentially set forth the contents of the applications that are required, which involve where the gas is coming from, how abundant the natural gas supply is, the commercial terms of the arrangements. And the public interest standard, while Congress set it, did not put a lot of criteria, actually no criteria on it, and that has been developed over the years. We don't particularly have any issues with the fact that the agency can develop that public interest standard as it adjudicates the cases over time. We think that the role of Congress to set policy and the role of any regulatory agency to flesh out that policy on a case-by-case basis is sound. Even the cumulative impacts that was discussed previously do not particularly concern us if they are handled within the promulgated rules and the structures that DOE has in place, and not to change that after the applicants have already filed to where they can't respond. What I mean by that is when we look at—when DOE looks at cumulative impacts, if it looks at the existing facilities compared to the existing supply picture, we think that that will justify the issuance of these applications for LNG exports. The question is the timing.

Mr. WHITFIELD. OK, thank you, Mr. Cooper.

I want to thank you all again. I know some of you came very long distances, and we appreciate your making the trek across the country or from wherever. We appreciate your testimony and look forward to working with all of you as we move forward.

And with that, the hearing is adjourned and the record will remain open for 10 days for any additional materials. Thank you.

[Whereupon, at 1:21 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

 **McCRONE
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14 June 2012

Mr. Benjamin Schmidt
Air Quality Specialist
Missoula City-County Health Dept.
301 West Alder Street
Missoula, MT 59802

Subject: Analysis of Dust Samples
Re: McCrone Associates Project MA53061

Dear Mr. Schmidt:

We have completed our analysis of the above referenced samples. This analysis was performed under authorization of your purchase order number AIR45. The following report summarizes our methodology and the results.

SAMPLE RECEIPT

On 16 April 2012, McCrone Associates received by via UPS. The items were identified in the Sample Submission Form as follows:

- A. Tape Sample, 200 Block Rail Road Street, 65°F, Swirling 8 mph wind
- B. Cloth sample, 314 N 1st St. West
- C. Tape sample, 314 N 1st St. West
- D. Cloth Sample, Bike/Ped Bridge on North side of railroad track

You requested that the four samples be analyzed for coal dust particulates. You request that the approximate % of material that is coal dust be determined.

ANALYSIS

Sample A consisted of dust collected on a tap lift. The tape lift was received attached to a glass slide and examined as received. The particles were collected on frosted tape making examination of the particles difficult. A portion of the tape was removed and placed on a separate microscope slide with the adhesive side up for additional analysis. With the particles embedded in the adhesive of the tape it was not possible to confirm steel/steel corrosion particles with a magnet.

Mr. Benjamin Schmidt
MA53061

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Sample B consisted of a cloth wipe supporting a pinkish black particle load. A portion of the dust was removed from the wipe and transferred to a microscope slide for analysis.

Sample C consisted of dust collected on a tap lift. The particle load on the tape was very sparse. Many of the particles appear to be metal/metal corrosion, pinkish colored paint flakes some mineral grains, coal dust particles. The particles were distributed in clumps on the tape making a determination of the percentage of the different particle types difficult. The particles were collected on frosted tape making examination of the particles difficult. A portion of the tape was removed and placed on a separate microscope slide with the adhesive side up for additional analysis. With the particles embedded in the adhesive of the tape it was not possible to confirm steel/steel corrosion particles with a magnet.

Sample D consisted of a cloth wipe supporting a greenish black particle load. A portion of the dust was removed from the wipe and transferred to a microscope slide for analysis.

Each sample was analyzed using a combination examination by stereomicroscope and polarized light microscopy (PLM) to determine the relative percentages of the different particle types. With polarized light microscopy (PLM) particles are identified by observing: transparency or opacity, texture (internal and surface), color (by transmitted and reflected light), pleochroism, size, shape, presence or absence and degree of birefringence, refractive indices relative to the mountant, cleavage, fracture, sign of elongation (if applicable), hardness, tendency to dissolve, magnetic susceptibility, and other features depending on the actual particle being observed. These observations coupled with experience generally enable the identification of more than 95% of the particles in a given dust sample. The relative quantity of each component in the dust is estimated by arriving at a volume percentage for each component by inspection of numerous fields of view. These estimates have an average precision of approximately $\pm 10\%$. The results our analyses are summarized in Table 1.

This testing was conducted in a Good Manufacturing Practices compliant laboratory.

Thank you for consulting McCrone Associates. Your samples will be retained for 30 days after the date on the final report and then discarded unless you direct otherwise. If you have any questions regarding this report, please contact me.

Sincerely,

Mark A. Bukantis
Research Microscopist

MAB:
Ref: MA53061; P.O. AIR45

Mr. Benjamin Schmidt
MA53061

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TABLE 1

Summary of Particle Analysis by PLM

Sample Number	Component	Relative abundance (Estimated % by volume)
Sample A Tape Sample 200 Block Rail Road Street, 65°F, Swirling 8 mph wind	<ul style="list-style-type: none"> Miscellaneous mineral grains Coal dust Metal/metal corrosion Pinkish paint flakes Miscellaneous plant material 	40-50 1-5 30-40 5-10 5-10
Sample B Cloth sample 314 N 1 st St. West	<ul style="list-style-type: none"> Pinkish-red paint flakes Miscellaneous mineral grains Steel/steel corrosion Welding spheres Miscellaneous plant material Tire rubber Coal dust 	10-20 60-70 5-10 1 - 2 2-5 2-5 1-5
Sample C Tape sample 314 N 1 st St. West	<ul style="list-style-type: none"> Coal dust Miscellaneous mineral grains Pinkish paint flakes Steel/steel corrosion Miscellaneous plant material 	Particles are too sparse to accurately estimate the concentration of different particle types
Sample D Cloth Sample Bike/Ped Bridge on North side of railroad track	<ul style="list-style-type: none"> Green paint flakes Colorless flakes Miscellaneous plant material Miscellaneous mineral grains Steel/steel corrosion Welding spheres Coal 	30-40 2-5 10 40 5-10 1-2 1-5

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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July 11, 2013

Ms. Jennifer Moyer
Acting Chief
Regulatory Program
U.S. Army Corps of Engineers
441 G Street, N.W.
Washington, D.C. 20314

Dear Ms. Moyer:

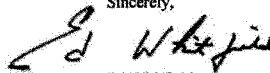
Thank you for appearing before the Subcommittee on Energy and Power on Tuesday, June 18, 2013, to testify at the hearing entitled "U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export."

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

Questions for the Record
Hearing before the Energy and Power Subcommittee
Committee on Energy and Commerce
June 18, 2013

Questions from Chairman Ed Whitfield:

1. The President's Council on Environmental Quality released draft guidance in 2010 proposing that federal agencies consider the climate change effects of their actions. This is an unprecedented step with far reaching geopolitical implications, as it effectively puts the U.S. in the position of evaluating the energy consumption choices and environmental policies of our trading partners.

a. Question: If CEQ's 2010 draft guidance on climate change is finalized, would this guidance require the U.S. Army Corps of Engineers to consider the international climate change impacts associated with coal consumed in foreign countries that was exported from U.S. ports?

Answer: Should the guidance be finalized as written, and absent any change in law or relevant decision in a federal court, the Corps would make a legal determination as to whether the guidance provides the requisite authority to the Corps to consider the international climate change impacts associated with coal consumed in foreign countries that was exported from U.S. ports. The Corps does not currently possess the requisite technical expertise to make such an international climate change analysis.

b. Question: Has the Corps ever considered the international climate change effects in the permitting of U.S. export terminals?

Answer: No. The Corps implements its Regulatory Program based on statutory authorities, regulations and existing legal precedent, which charge the Corps to ensure that regulated structures and fill in waters of the United States, and the impacts of those structures and fills, are addressed in compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

c. Question: How much longer would it take for the Corps to incorporate a global life-cycle environmental analysis, including greenhouse gases, into the NEPA review?

Answer: A global life-cycle analysis would be extremely complicated and complex, requiring extensive time and resources. Based on existing statute and regulation, the Corps does not have the authority to incorporate a global life-cycle analysis as part of the evaluation associated with activities that require a Department of the Army permit for the discharge of fill material into waters, or for structures/work in navigable waterways. Greenhouse gas emissions will be evaluated to the extent that they occur within the Corps' control and responsibility in association with construction activities and potential increase in vessel traffic associated with any work that may be permitted.

d. Question: What are some of the challenges to performing such a global life-cycle analysis?

Answer: This type of analysis is beyond the Corps' statutory authorities. Because the Corps does not have control or responsibility over the activities associated with the full life-cycle of a commodity we are unable to provide details regarding the challenges of such an evaluation.

2. Question: If the Corps is required to complete a global life-cycle environmental analysis as part of its NEPA review for a coal export terminal, would the Corps be able to determine the relationship between a single coal export facility and the global environment? What are some of the variables you would have to contend with in understanding such a relationship?

Answer: We do not have sufficient information at this time to conclude whether it would be possible to connect the effects of extracting, transporting and burning coal from a specific mine, through a specific shipping facility, to its ultimate global destination for consumption and the potential resulting effects on global climate change.

3. Question: What is the average timeframe for the Corps to complete an environmental impact statement for a proposed marine export terminal?

Answer: We reviewed readily available information for eight marine facilities located along the Atlantic, Gulf and Pacific Coasts in three states over the last 10 years. The average time to complete an environmental impact statement (EIS) for such a marine export terminal facility was 3 1/2 years.

4. Question: You testified that the NEPA documents for the three proposed projects are "at an early stage." How long do you anticipate the whole NEPA process will take for these projects. How about just for the Corps portion of the review? Will you commit to an expeditious timeline for completion of the review?

Answer: For the Gateway Pacific Terminal, the Draft EIS is expected to be published for public comment in August 2014, with a final Record of Decision published in November 2015. For the Millennium Bulk Terminal, the Draft EIS is expected to be published for public comment in June 2015, with a final ROD published in September 2016. For the Coyote Island Terminal, the current Environmental Assessment is underway and expected to be completed by March 2014. I assure you that the Corps is carefully evaluating each of these pending proposals and will make decisions as efficiently and as expeditiously as possible while complying with all applicable laws and regulations.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2827
Minority (202) 225-5641
July 11, 2013

Mr. Jeff C. Wright
Director
Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Mr. Wright:

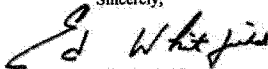
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Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

The Honorable Ed Whitfield

- 1. Has EPA filed comments with FERC on any LNG export facility that was critical of FERC's analysis or asking FERC to take a more expansive global life-cycle analysis?**

To date, we have received EPA scoping comments for five projects with pending applications before the Commission (Freeport LNG Development LP, Cameron LNG, LNG Development Co., LLC (Oregon LNG), Jordan Cove Energy Project, LP, and Cove Point LNG) and two projects currently in pre-filing (Trunkline LNG Co. and Excelerate Liquefactions Systems I, LLC). In its comments, EPA has generally recommended that the Commission evaluate and disclose the Green House Gas emissions and climate change effects resulting from the proposed project during all project phases and/or the life-cycle emissions of LNG exports.

- 2. What is the position of your office on whether a state has authority under the Coastal Zone Management Act to allow a county to effectively veto a Section 7 natural gas pipeline application by withholding a local permit?**

The FERC does not administer the Coastal Zone Management Act (CZMA) and, therefore, my office has no position on this question. The Commission is aware that states manage their delegated authority under the CZMA in different ways and that state programs could include provisions which might allow a CZMA proposal to be denied due to conflict with local laws.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 226-2927
Minority (202) 225-3841

July 11, 2013

Mr. Christopher A. Smith
Principal Deputy Assistant Secretary and
Acting Assistant Secretary for Fossil Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20460

Dear Mr. Smith:

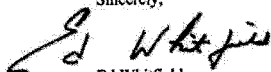
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Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment



Department of Energy

Washington, DC 20585

August 27, 2013

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On June 18, 2013, Christopher Smith, Acting Assistant Secretary for Fossil Energy, testified regarding the "U.S. Energy Abundance: Regulatory, Market, and Legal Barriers to Export."

Enclosed are the answers to four questions that were submitted by Representative Joe Barton to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen at (202) 586-2031.

Sincerely,

A handwritten signature in black ink, which appears to read "Christopher E. Davis", is written over the typed name.

Christopher E. Davis
Deputy Assistant Secretary
for Congressional Affairs
Congressional and Intergovernmental Affairs

Enclosure

cc: The Honorable Bobby L. Rush, Ranking Member



Printed with soy ink on recycled paper

QUESTION FROM REPRESENTATIVE BARTON

- Q1. Is DOE statutorily obligated to consider the cumulative impact of liquefied natural gas export authorizations? Please provide the legal argument defending your position.
- A1. DOE is required by statute to review whether a proposed authorization for the export of liquefied natural gas (LNG) is consistent with the "public interest." See 15 U.S.C. § 717b(a) ("[DOE] shall issue such order upon application, unless, ... it finds that the proposed exportation ... will not be consistent with the public interest.").

DOE's review of LNG export applications focuses on: (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the proposed export arrangement is consistent with DOE's policy of promoting market competition, and (iv) any other factor bearing on the public interest. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts.

As one such factor, DOE considers the cumulative impact of each successive LNG export authorization on domestic natural gas supply and demand fundamentals. See, e.g., *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, at 5-7, 112-113 (May 17, 2013). DOE's review of this factor enables the agency to assess the impact of all LNG export authorizations to date on the security and availability of domestic natural gas supplies. DOE believes that this analysis is a key determinant of the public interest.

QUESTION FROM REPRESENTATIVE BARTON

- Q2. Please define “cumulative impact” as referred to in the Freeport LNG Order (DOE/FE Order No. 3282).
- A2. “Cumulative impact” refers to the additional impact(s) on the public interest associated with each successive authorization to export liquefied natural gas, focusing on the effect of the export on domestic natural gas supply and demand fundamentals.

QUESTION FROM REPRESENTATIVE BARTON

Q3. Please list the factors that DOE will consider in the cumulative impact analysis.

A3. DOE/FE's review of LNG export applications focuses on: (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the proposed export arrangement is consistent with DOE/FE's policy of promoting market competition, and (iv) any other factor bearing on the public interest. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts.

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QUESTION FROM REPRESENTATIVE BARTON

- Q4. Please describe how DOE would evaluate economic, international and environmental considerations in each of the following scenarios. Please include any additional criteria DOE would consider. Your comments will aid in the illustration of DOE policy regarding review of the public interest standard.
- a. Company A applies for authorization to export LNG to a non-FTA country seeking to prevent gas supply interruptions by reducing its dependence on geopolitically unstable regions.
 - b. Company B applies for authorization to export LNG to a non-FTA country seeking to diversify its gas supply routes in order to negotiate a lower price from another supplier.
 - c. Company C applies for authorization to export LNG to a non-FTA country seeking to diversify its energy portfolio in order to meet environmental goals.
 - d. Company D applies for authorization to export LNG to a non-FTA country seeking to supply a new natural gas power plant that will provide villages with reliable and affordable electricity for the first time.
- A4. Section 3(a) of the Natural Gas Act (15 U.S.C. § 717b(a)) sets forth the standard for review of LNG export applications to non-free trade agreement countries. This provision creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE must grant such an application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest. In making a public interest evaluation, DOE will consider a number of criteria. DOE identifies the criteria considered as part of DOE's public interest review process in each Federal Register Notice of Application, which domestic need for the gas proposed for export, adequacy of domestic natural gas supply, as well as economic, international and environmental considerations, among others. Because each unique application has many criteria that the Department may consider, it is not possible to isolate the impact, and how the Department would consider, the hypothetical scenarios posed here.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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July 11, 2013

Mr. Mike McGinn
Mayor
City of Seattle
P.O. Box 94749
Seattle, WA 98124

Dear Mr. McGinn:

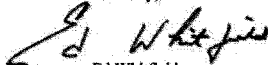
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Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member,
Subcommittee on Energy and Power

Attachment

The Honorable David B. McKinley

Mr. Mayor, I appreciated our exchange with regards to exports and coal impacts. Most recently the governors from Oregon and Washington State recently sent letters demanding a full life cycle carbon analysis of exports in advance of the export approval related to products. One of your region's major exports is airplanes, I'm wondering have the Governors of Oregon or Washington conducted a life cycle analysis of the carbon impact of the planes that are being exported? Do you support an effort to require such an analysis, particularly a cumulative analysis of the impact of those plane exports on carbon levels worldwide?

Representative McKinley, thank you for this thought provoking question. To my knowledge the governors of Oregon and Washington have not conducted an analysis of the carbon impacts of airplane export.

However, the Boeing Company, a major airplane manufacturer that operates a number of large production facilities in the State of Washington, reports on its environmental performance annually. Their 2013 Environment Report shows that Boeing is a world leader in reducing overall carbon emissions in both building and operational performance of their airplanes: http://www.boeing.com/aboutus/environment/environment_report_13/2_2_performance_targets.html.

Boeing considers environmental performance measures throughout a product's life cycle, starting with design and manufacturing and extending through in-service use and end-of-service recycling and disposal. Most of an aircraft's lifetime carbon emissions occur in service, so Boeing is focusing on building more fuel-efficient airplanes, promoting the development of sustainable aviation biofuels, and improving the efficiency of the global air traffic system. Boeing is also working with the aerospace industry to reach the goal of recycling 90 percent of retired airplanes by 2016. Since 2007, Boeing has reduced carbon emissions by 9% and is targeting zero-carbon growth over the next 5 years, even with business expansion. Boeing is also a participant in the City of Seattle's High Performance Building Pilot along with Microsoft and the Department of Energy. The goal of the program is to reduce energy consumption in commercial buildings by up to 20% using IT and cloud capabilities.

Here in the City of Seattle, our municipal-owned electric utility, Seattle City Light, has been carbon neutral for 8 years, choosing to operate primarily with renewable energy sources including hydro-electric, solar and wind energy. City Light divested from Washington's only coal fueled power plant a number of years ago, replacing capacity with energy conservation measures and renewable energy.

I'm proud that the City of Seattle and companies like Boeing have stepped up to the plate to better understand their carbon footprint, and to take important steps forward in working to reduce those impacts.

Finally, I wanted to take this opportunity to follow up on another issue you brought up during the hearing, specifically crime rates in the City of Seattle. In the hearing, you asserted that "ninety-four percent of the cities across America have a lower crime rate than you have in that city." In fact, according to 2011 data from the Federal Bureau of Investigation Uniform Crime Report, Seattle ranks 18th out of the 25 largest cities in the country for violent crime rates and only 28% of cities have a lower crime rate than Seattle.